

10.12.2025
Ct. No. 06
Sl. No.10
skg

C.O. No. 3922 of 2025

Seema Gupta @ Sreema Gupta
Vs.
Supriya Pal @ Supriya Paul & Anr.

Mr. Debdipto Banerjee,
Mr. Partha Sarathi Maitra,
.....for the petitioner

Mr. Abhijit Ray,
Mr. Debnath Ganguly,
Mr. Supriya Dutta,
...for the respondents/

1. Mr. Abhijit Ray, learned Advocate for the opposite parties raises a question of maintainability of this application on the ground that, when an application under Section 5 of the Limitation Act was rejected on merits in a proceeding under Order 9 Rule 13 of the Code of Civil Procedure, the remedy of the petitioner would be by way of a miscellaneous appeal.
2. Reliance has been placed on the decision of the Hon'ble Apex Court in the matter of ***The Koushik Mutually Aided Cooperative Housing Society v. Ameena Begum & Anr.*** reported in ***2023 INSC 1065***. According to Mr. Ray, the Apex Court had laid down the law that, rejection of an application for condonation of delay in filing the application for setting aside an ex parte decree amounts to dismissal

of the said application. The law provides that from an order of rejection of an application for setting aside an ex parte decree, a miscellaneous appeal lies.

3. In this case, the application under Section 5 of the Limitation Act was decided on merits and rejected. The remedy of the petitioner will be by way of an appeal because the order impugned amounts to rejection of the application under Order 9 Rule 13 of the Code of Civil Procedure.
4. Mr. Banerjee, learned advocate for the petitioners answers such maintainability issue by pointing out that the petitioner has invoked the supervisory jurisdiction of this court, conferred by the constitution under Article 227 of the Constitution of India, on the ground that the learned Court had committed a procedural irregularity, which led to passing of an illegal order. The petitioner was deprived of her right to contest the proceeding in accordance with law.
5. I have heard the submissions of the respective parties. In my view, the general power of superintendence can be invoked by the High Court if the order suffers from perversity or if the order has been passed in abuse of process of court or without jurisdiction or in excess of jurisdiction.

6. The petitioner filed an application under Section 5 of the Limitation Act for condonation of delay in filing the application for setting aside the ex parte decree. In the absence of the petitioner, the application was called and the learned court passed an order on merits, thereby rejecting the application, without granting an opportunity to the petitioner to place her case. This amounts to violation of the principles of natural justice and such procedural irregularity has caused irreparable loss and injury to the petitioner. Such irregularities can be corrected by invoking the superintending power under Article 227 of the Constitution of India. The learned Court could have discussed the application for default in the absence of the petitioner, and the petitioner could have prayed for restoration.. The learned Court did not have the jurisdiction to pass an order upon dealing with the merits of the application for condonation of delay in the absence of the petitioner.
7. Under such circumstances, the order impugned is set aside.
8. The learned court is requested to hear out the application for condonation of delay afresh, upon granting an opportunity to the opposite parties to file their written objection and contest the same.
9. The revisional application is accordingly disposed of.

10. There shall be no order as to costs.

11. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)