

23.02.2026
Ct. No. 06
Items 5 & 6
Cp

C.O. 4447 of 2025
with
C.O. 4450 of 2025

Tamal Krishna Ghosh
Vs.
Prama Ghosh (Dey)

Mr. Animesh Paul
Ms. Manisha Upadhyay

.....for the petitioner.

Mr. Jagannath Ganguly
Ms. Sutapa Mandal

.....for the opposite party.

These two revisional applications arise out of orders passed in the same Matrimonial Suit, i.e., Matrimonial Suit No.35 of 2018. The husband/petitioner is aggrieved by the two orders, dated December 2, 2025 and the order December 9, 2025. The revisional applications are taken up together.

Re: C.O. 4447 of 2025

The revisional application arises out of two orders dated December 2, 2025 and December 9, 2025. By order dated December 2, 2025, the application under Order 9 Rule 9 of the Code of Civil Procedure along the application under Section 5 of the Limitation Act, seeking restoration of the Matrimonial Suit No.35 of 2018 was dismissed for default on the ground that the petitioner was absent,

despite several calls. The learned court proceeded to hear the counter claim ex parte. The Misc. Case was accordingly dismissed.

By order dated December 9, 2025, the learned court refused the prayer for vacating the order dated December 2, 2025, by which the counter claim was decided to be heard exparte. The court did not permit the petitioner to contest the counter claim.

The husband had filed the application under Order 9 Rule 9 of the Code of Civil Procedure along with an application for condonation of delay pursuant to a liberty granted by this court. Although, the husband was absent, the learned court could have allowed another opportunity to the husband to pursue his application. Moreover, when the husband appeared on the next date fixed and prayed for a chance to contest the counter claim along with a prayer before the court to vacate the decision to proceed with the counter claim ex parte, a chance could have been given to the petitioner upon imposition of cost for the delay and the harassment caused to the wife.

Under such circumstances, the two orders dated December 2, 2025 and the order dated December 9, 2025, passed by the learned Additional District Judge, 3rd Court, Barrackpore, in Matrimonial Suit No.35 of 2018, are set aside.

The Misc. Case will be heard afresh.

Cost of Rs.10,000/- shall be paid by the petitioner to the wife within one week from date to the advocate on record for the wife before this court either by cash or demand draft. A receipt shall be granted.

Further, a sum of Rs.1,00,000/- shall be paid by the husband-petitioner upfront to the wife towards arrear maintenance within one week as it is informed to the court that not a single farthing has been paid to the wife. An execution case is already pending. The payment of the remaining arrears will be decided in the execution case. The learned court shall proceed with the hearing of the misc. case upon being satisfied that the cost of Rs. 10,000 as also Rs. 1,00,000, as directed hereinabove has been paid. The Misc. Case will be disposed of with three weeks from date.

Server copy of this order will be communicated to the learned court upon filing a put up petition with a notice to the opposite party/wife and/or her learned advocate in the learned trial court and the learned court shall fix a date for hearing of the misc. case.

If the petitioner misses that date and/or prays for an adjournment, then the learned court shall proceed to deliver the judgment on the counter claim. In the event the court is satisfied that the suit should be restored, then an opportunity should be given to both the parties to

contest the suit. The hearing of the counter claim shall be fixed after the Misc. Case is decided.

The petitioner shall be allowed to advance arguments on the counter claim, and the same shall not proceed ex parte even if the suit is not restored.

Accordingly, C.O. 4447 of 2025 is disposed of.

Re: C.O. 4450 of 2025

With the disposal of C.O. 4447 of 2025, C.O. 4450 of 2025 is also disposed of.

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

(Shampa Sarkar, J.)