

Order No.4 dated 14.02.2023:

Today is fixed for hearing of petition U/s-5 of the Limitation Act.

Both parties file hazira.

Petition U/s-5 of the Limitation Act as well as Misc. Case are taken up for hearing on consent of Ld. Advocate of both sides.

Ld. Advocate appearing for the petitioner submitted that Mat suit was dismissed on 25.04.2022 but it was not within the knowledge of the petitioner and he came to know about the dismissal of the suit only on 26.09.2022 when he came to Serampore Court to know the status of his case and thereafter he engaged another Advocate and filed this Misc. Case along with an application for condonation of delay. Ld. Advocate further submits that it was a dismissal under Order 9 Rule 3 CPC and such dismissal is not a bar to filing of fresh suit but in order to save time the petitioner wants restoration of Mat Suit. He further submitted that the Court should take approach while considering the application for condonation of delay.

Ld. Advocate appearing for the opposite party submitted that there is no sufficient ground for condonation of delay and it is the duty of the litigant to keep information of his case.

Perused the application under Order 9 Rule 4 CPC as well as the application under Section 5 of the Limitation Act and written objection thereto. Considered.

On 18.02.2022 date was fixed for filing requisites by the petitioner in the Mat Suit but the petitioner failed to take steps on that day and consequently the petitioner was directed to show cause by 25.04.2022 as to why the suit shall not be dismissed. The petitioner failed to submit show on 25.04.2022 and consequently the suit was dismissed for default on that day. This dismissal of Mat Suit happened before service of summons upon the respondent. It was a dismissal of Mat suit under Order 9 Rule 3 CPC. In view of Order 9 Rule 4 CPC dismissal of suit either under Rule 2 or Rule 3 of Order 9 CPC will not operate as bar to filing a fresh suit on the same cause of action. In alternative the petitioner may apply for an order to set the dismissal aside which the petitioner did in this case. The application for setting aside the order of dismissal was filed 129 days after expiry of the period of limitation. The petitioner has filed separate application under Section 5 of the Limitation Act praying for condonation of delay in filing the application under Order 9 Rule 4 CPC. The ground for condonation of delay is that the petitioner was not communicated about the date fixed for filing show cause by the then Advocate and the Law Clerk and for the first time the petitioner came to know about dismissal on 26.09.2022 when the petitioner came to Serampore Court to know the status of his Mat Suit and thereafter he contacted his new Advocate and filed the application for restoration together with application for condonation of delay. It is the duty of litigant to keep information about the status of his/her suit or case. The explanation for delay does not appears to be satisfactory. However, this Court considers that if this application is allowed subject to payment of cost it would save time and money which would be expend in filing fresh suit and service of summons upon the adversary. In this view of the matter, I think that delay should be condoned and application under Order 9 Rule 4 CPC should be allowed subject to payment of cost. So that the main suit i.e. Mat Suit be expedited.

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Hence,

ORDERED

That application under U/s-5 of the Limitation Act as well as the application under Order 9 Rule 4 CPC are allowed on contest subject to payment of cost of Rs.2,500/- (Rupees Two thousand five hundred) only by the petitioner to the opposite party.

Fix 06.04.2023 for payment of cost.

Dict. & corr. By me.
Sd/- Sri. Shailendra Kumar Singh
Addl. District Judge, 2nd Court,
Serampore, Hooghly.

Sd/- Sri. Shailendra Kumar Singh
UID No. - WB665
Addl. District Judge, 2nd Court,
Serampore, Hooghly.