
(1998) 08 CAL CK 0034
In the Calcutta High Court
Case No : Civil Order No. 45 of 1992

Dipali Biswas (Smt.)

APPELLANT

Vs

Oil India Corporation Ltd.

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 9, 141
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Article 123, 137, 5
Motor Vehicles Act, 1988 — Section 110, 140

Citation : (1998) 2 ILR (Cal) 371

Hon'ble Judges : D.P. Sarkar-II, J

Bench : Single Bench

Advocate : Tarak Nath Roy, for the Appellant; R.K. Drolia, for the Respondent

Judgement

D.P. Sarkar-II, J.—This is an application under Article 227 of the Constitution of India directed against the order No. 55 dated September 28, 1991 passed by the Additional Dist. and Sessions Judge, Durgapur in M.A.C. Case No. 104 of 1987 and the Miscellaneous Case No. is 6 of 1990. The present Petitioner filed a claim case under the M.V. Act u/s 110 and an award was passed for Rs. 1,50,000.00 against the opposite party Insurance Company, but this order was passed ex parte. Naturally, the opposite party filed an application under Order 9 Rule 13 CPC for setting aside the ex parte award. When that misc. case is pending, the opposite party defaulted again, as a result, the tribunal also dismissed the misc. case under Order 9 Rule 13 CPC for default. The learned Tribunal below allowed that misc. case under Order 9 Rule 9 and restored the Original misc. case under Order 9 Rule 13 Code of Civil Procedure. But the present Petitioner who was the opposite party in those misc. cases was aggrieved by such order the Tribunal and has filed the present application under Article 227 of the Constitution of India on the ground that the Tribunal did not record any finding as to its satisfaction about existence of sufficient ground for non-appearance and also in applying the provision of Article 137 of the Indian Limitation Act instead of Article 123.

2. After going through the impugned order, I find that the learned Tribunal did not consider the factual aspect in connection with the condonation of delay as mentioned in the petition u/s 5. He has simply held that it was not Article 123 but the residuary Article 137 of the Indian Limitation Act which will be applied to the present case and as such although there is delay of 311 days, yet, it is within three years as contemplated by Article 137. So, there is no question of condonation of delay. On this particular point, it appears that before the Tribunal argument was placed- that under Order 9 Rule 9 CPC the period of limitation should be 30 days and not three years. On the other hand, the learned advocate for the opposite party has referred to me a decision of Special Bench of this High Court of Mst. Nurnahar Bewa v. Rabindra Nath Dev AIR 1988 Gal. 358 where it has been laid down that an original misc. case under Order 9 Rule 13 or Rule 9 CPC stands on different footing from a misc. case arising for dismissal for default of the original misc. case within the meaning of Section 141 of the Code of Civil Procedure. Section 141 CPC lays down that the provision of Order 9 CPC will be applicable not only to the suits but also to other proceedings. But Article 123 of the Limitation Act lays down the limitation of 30 days in case of restoration of a suit that was disposed of under Order 9 Code of Civil Procedure. It does not cover the cases where the original misc. case under Order 9 is either dismissed for default or disposed of ex parte. Accordingly, the Special Bench has arrived at the conclusion that for such cases where the original misc. case has been dismissed for default or disposed of ex parte no specific provision for limitation is there in the Limitation Act and in the absence of any specific provision the residuary provision contained in the Article 137 of the Limitation Act shall come into play and in such case the period of limitation will be three years. The learned advocate for the Petitioner could not controvert this legal position as enunciated by the Special Bench of this Court as referred to above. Accordingly, the delay of 311 days is covered by the period of limitation of three years as contemplated by Article 137. If the remedy sought for is within time, there is no question of condonation of delay u/s 5 of the Limitation Act and if there is no question of condonation of delay, there is also no requirement of proving the sufficient cause for non-appearance. In the above circumstances, I do not find any merit in the revisional case under Article 227 of Constitution of India. Accordingly, the revisional case under Article 227 of the Constitution of India be disposed of. The learned Tribunal is hereby directed to expedite the hearing of the claim petition which has been already delayed unfortunately for a long time. The provisions of Sections 140 and 110 of the M.V. Act contain socially beneficial legislations keeping in mind that aspect the misc. case No. 2 of 1988 of this Court should be disposed of within three months from the date of communication of this order and the Tribunal is also directed to bestow his best attempt to dispose of the original claim case within four month therefrom without granting any unnecessary adjournments or making unnecessary delay in disposal of the matter and both the parties are also hereby directed to extend their cooperation for early disposal of the matters before the Court.

3. If xerox certified copy of this order is applied for, that may be supplied within two weeks from the date of filing the requisites. The requisites is to be filed within seven days.