

Misc. Case 4551 of 2025
Present: Partha Pratim Chakravorty, Judge, Bench-X
J.O.Code: WB01277

Order No. 238
Date: 01.08.2026

Both sides are present by hazira.

Ld. Advocate for the petitioner being the defendant No. 4 in the original suit proposes to move the application for stay filed in connection with the instant Misc. Case.

Ld. Advocate for the O.P.s/plaintiff s respond by addressing the Ld. Court that he is ready to place his submissions in connection with application for stay.

Ld. Advocate for the petitioner at the very onset draws my attention to the error which has sneaked in the judgment giving birth to the preliminary decree and compelling the petitioner to initiate the instant case for review of the same. It is furthermore agitated from the end of the petitioner that the imminent necessity for stay of the progression of the Title Suit arises on account of the reason that if the judgment and decree attains finality through the culmination of the suit, the rights and interests of the defendant being the petitioner herein in the corpus of the litigation will get frustrated and extinguished without an opportunity being conferred upon her to test the defects which have stained the judgment. It is also ventilated from the end of the petitioner that the scope of the Ld. Court to review the judgment impugned does not suffer from any impediment as the appeal which was preferred before the Hon'ble Court challenging the judgment and decree by another set of defendants has lost its life on being dismissed by the Hon'ble Court. With these submissions, Ld. Advocate for the petitioner has fervently prayed for grant of stay of the Title Suit.

Ld. Advocate for the plaintiffs/O.P.s has vehemently opposed the prayer for stay as sought by the petitioner. He opens his submissions by agitating the issue relating to the sustainability of the application for review being the instant Misc. Case on being hit by the law of limitation. It is

ventilated further by the Ld. Advocate representing the O.P.s that the judgment was passed in the year 2016 and after a long lapse of 9 years, the petitioner woke up from her slumber and filed the instant application to pose a challenge to the judgment which attained finality over the efflux of time. As per the Ld. Advocate of the O.P.s, the petitioner herein was a party to the appeal which was filed in the year 2016 and for reasons best known to the said petitioner she did not raise the issues as projected in the instant application before the Hon'ble Court. The dismissal of the appeal in view of the Ld. Advocate representing the O.P.s fetters the jurisdiction of this Ld. Court to analyse and evaluate the judgment impugned and such a venture would tantamount to the initiation of a process beyond the purview of the decision of the Higher forum and would confront the basic tenets of hierarchal discipline. By embarking on these submissions, Ld. Advocate for the O.P.s has prayed for dismissal of the application for stay.

Heard.

Before I initiate the process of adjudication of the application for stay, it is essential on my part to have a glance of the relevant provisions of the law of limitation so as to understand the period prescribed for bringing out an application to review a judgment by the party aggrieved and interested in the review. A meticulous reading of the provisions of Article 124 of the Limitation Act, 1963 conceptualizes the period which is scheduled as the time within which the application for review of a judgment has to be filed. It is evident from the provisions enumerated in the statute that the said period is thirty days. The present application for review of the judgment being registered as the Misc. Case was brought out after lapse of nine years from the date of passing of the same. It is apparent from the application for stay preferred in connection with the instant Misc. Case that on an earlier occasion, an appeal was preferred before the Hon'ble Court but the same reached the stage of culmination. The contents of the application for stay try to ventilate that the suits in connection with which the judgment was passed were conducted by the

other defendants keeping the present petitioner completely in the dark . But no cogent or reliable piece of evidence is surfacing from the record which circumvents and calibrates the Misc. Case to picturise the admissibility of such an averment of the petitioner. The lack of diligence occasioning the delay in bringing out the application for review did not get explained by any cause being cogent sound and reasonable one. The prolonged delay in bringing out the review application diminishes any scope for the petitioner to embrace herself with the entitlement for any equitable relief in the nature of stay of the Title Suit during the pendency of the Misc. Case. It is pertinent for me to refer to a decision of the Hon'ble Supreme Court as reported in (2013) 14 SCC 81 wherein the Hon'ble Court observed “ the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression, ‘sufficient cause’ as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of *bona fide* is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

In the light of the principles laid down by the Hon'ble Supreme Court and upon a bare reading of the provisions of Order XLVII Rule 1 of the Code of Civil Procedure, 1908, an application for review of a judgment can only be entertained within the strictly prescribed period of limitation, or where sufficient cause for delay is properly explained and condoned.

It is a well-settled proposition of law, as reinforced in *Prem Singh & Ors. v. Birbal & Ors.* [(2006) 5 SCC 353], that limitation is a statute of repose. Section 27 of the Limitation Act, 1963 provides that upon the lapse of the prescribed period for instituting a suit or proceeding, the right itself stands extinguished. Section 3 of the Limitation Act mandates that irrespective of whether limitation is set up as a defense or not, every suit, appeal, or application instituted after the prescribed period shall be dismissed.

In the present case, the review application, registered as the instant Misc. Case, is hopelessly time-barred, having been filed after an unexplained lapse of nearly 9 years. Furthermore, no separate application under Section 5 of the Limitation Act setting forth any cogent or sufficient cause to condone such exorbitant delay has been presented or substantiated by the petitioner.

When the underlying application for review itself suffers from an incurable defect of limitation, leading to the extinction of the remedy and right sought to be agitated, no interim order of stay can be granted in favor of the petitioner. Allowing an application for stay in a time-barred review proceeding would frustrate the ends of justice and cause unwarranted prejudice to the opposite parties/plaintiffs.

The punctilious reading of the provision couched in Order 47 Rule 1 of C.P.C dealing with the subject of review of a judgment portrays the eligibility of a party seeking review of the judgment which has aggrieved him or her.

The influence and the effect of an appeal wherein the judgment sought to be reviewed over the tenability of an application for review propounds that pendency of an appeal will not apply to a party who has not preferred the appeal challenging the decree, except where the ground of such appeal is common to the applicant of the review and the appellant in the appeal, and also when the applicant, being the respondent in the appeal, can agitate the grounds resting on which the application for review is intended application for review has been filed to the Appellate Court.

As excluding from the factual matrix intertwined with the present application for review, it is undisputed that the applicant for the review was one of the respondents before the Hon'ble Court in the concerned appeal.

It is transpiring from the pleadings which have been adduced by the parties in connection with the instant review application, and especially that brought out by the defendants No. 1 and 2, that the cause to post a challenge to the tenability and sustainability of the judgment and decree is similar to that which is reflected in the application for review.

So, this restrictive clause as embedded in Order 47 Rule 1 Sub-rule 2 of CPC devests the scope of the applicant, being the petitioner, to seek a relief of rectification of the defect which has smeared the judgment to be rectified through this application.

Consequently, this Court finds no merit in the application for stay.

Hence it is,

ORDER

that the application for stay filed in connection with Misc. Case No. 4551 of 2023 is hereby rejected. Consequently, as the main review application being Misc. Case No. 4551 of 2025 is patently time-barred and devoid of any explanation or application for condonation of delay, the Misc. Case No. 4551 of 2025 also stands dismissed.

D/C by me

Sd/-
Judge, Bench-X

Sd/-
Judge Bench-X