

Misc. Judicial Case no. 20 of 2023

06 03.07.2024

Today the case is fixed for hearing of petition under section 5 of Limitation Act, in which, Ld. Lawyer of other side i.e. respondent did not appear. I also find that one separate Original Appeal being No.07 of 2023 has been filed, in which respondent S.Panchuvernani appeared by filing vakalatnama.

One submission has been made from the side of Ld. Lawyer of petitioner of M.J. No.20 of 2023 stating that since the Original Appeal has been filed after a delay of more than 13 year that is why my predecessor directed to file separate Misc. Judicial case. Accordingly, she filed the instant Misc. Judicial case.

Here, I would like to mention that order 41 Rule 3 A of CPC make it clear that if any appeal be filed after limitation period then it must be filed alongwith section 5 of Limitation Act and petition under section 5 of Limitation Act will be disposed up first in presence of Ld. Lawyer of respondent and thereafter, the appeal will be admitted. Hence, petition under section 5 of Limitation Act must have been filed alongwith original appeal. When I perused the Rule 776 of C.R.O, I find that there is a specific provision that which cases will be registered as Misc. Judicial case and this petition under section 5 of Limitation Act does not comes under the said Rule and hence, it should not be registered as separate misc. judicial case and it would be heard in original appeal.

Hence, this instant Misc. Judicial case be tagged with original appeal and since in original appeal, the respondent has already appeared and as per order 5 Rule 1 of CPC, when the respondent be before the court in that case, there is no need to serve copy of section 5 of Limitation Act petition upon him. In this case, the respondent had already been appeared in other appeal. Accordingly, he is directed to get ready by the next date for hearing the petition under section 5 of Limitation Act.

Accordingly, the original appeal be fixed for hearing of section 5 of Limitation Act on **26.07.2024**.

Let a copy of this order be tagged with the original appeal in order to avoid any future complication.

Dictated & corrected by me.

DJ

District Judge