

Title Appeal No. 18 of 2022
CNR WBBB01-002895-2022
JO CODE WB00702

Order no. 08 dt. 24/09/2024

This day is fixed for hearing of an application dated 28/02/2024 filed by the appellants/plaintiff under section 5 of Limitation Act for condonation of delay of 13 days on the ground stated therein.

This is an application made by the appellant /plaintiffs for condonation of delay in filing of the appeal in respect of the above mentioned section. According to the appellant /plaintiffs the delay is 13 days.

Perused the petition. Heard Ld. Advocate for the appellant /plaintiffs and the Ld. Advocate for the defendant-respondent. I have also gone through the petition for causing the delay of 13 days supported by an affidavit.

Ld. Advocate for the appellant /plaintiffs submits that they could not appear before this court as regards to sudden demise of Akkel Ali Khan (sole appellant) and as such, they could not file the instant appeal within the statutory period. Ld. Advocate further submits that the said delay which has been caused is an unintentional delay and accordingly, prayed for condonation of the said delay.

Ld. advocate for the defendant raised no objection in respect of the instant petition. But he submitted before this court that this is an appeal arising out of a partition suit. He also submitted that in absence of all the parties the instant appeal cannot proceed and as such praying for passing necessary order.

Hearing the submissions and on perusal of the petition along with the materials on record, in my opinion the cause mentioned in the petition constitute is bonafide and sufficient cause for the purpose of condonation of delay within the meaning of under Order 41 Rule 3A of Civil Procedure Code (in short CPC) read with section 5 of the Limitation Act. The condonation of delay advances cause of justice whereas converse defeats the cause of doing substantial justice. There is no deliberate delay on the part of the appellant /plaintiffs in filing of the aforesaid application as the appellant /plaintiffs in respect of the reasons mentioned above. Therefore, the delay in filing the application deserves to be condoned on the ground stated in the said application being an unintentional delay.

Accordingly, in view of the aforesaid discussion the petition dated 28/02/2024 Under Section 5 of the Limitation Act is hereby allowed with contest without cost.

Fix 18/12/2025 for taking steps by the substituted appellant-plaintiffs.

Dictated & corrected

sd/-

Additional District Judge,
1st Court, Burdwan

sd/-

Additional District Judge
1st Court, Burdwan