

**Misc. Appeal No. 01 of 2023**

*CIS No. 01 of 2023*

*CNR No. WBBK07-000103-2023*

*Present : Sri Tanumoy Karmakar (J.O. Code: WB01209)*

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**Order no. 10**

*Dated 13-12-2024*

This day is fixed for payment of cost and hearing the petition filed under Section 5 of the Limitation Act as well as W.O. by the respondents against application under Section 5 of the Limitation Act.

Memorandum of appearance filed by the appellant and respondents.

Cost is paid by the respondents and accordingly appellant filed money receipt to this effect and the same is kept with the record.

W.O. by the respondents filed against the application under Section 5 of the Limitation Act. The copy of the W.O. was served to the Ld. Counsel for the appellant and he received the same by putting his endorsement.

Now, the case record is taken up for hearing. Perused the application under Section 5 of the Limitation Act and W.O. filed by the respondents.

Heard Ld. Counsels for both sides at length.

At the very outset of this order, it is pertinent to mention here that the order of injunction application was allowed on ad-interim basis by Ld. Civil Judge (Jr. Division), Bishnupur on 27.11.2020 and thereafter the said order made absolute after fixing the instant suit as ex-parte on 04.04.2022.

Then, being aggrieved against that order, this instant misc. appeal was preferred by the defendant/ Appellant and presented before this Court on 06.03.2023. So, it is clear to me that this instant appeal was not presented within stipulated period of time as prescribed under the Limitation Act. Thus, the application under Section 5 was preferred by the appellant for condonation of delay.

During course of submission Ld. Counsel for the appellant bestowed one medical certificate of the appellant and inter alia submitted that during the prescribed period of limitation the

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appellant was suffering from various ailments. On the other hand, Ld. Counsel for the respondents vehemently raised objection and submitted that the medical certificate is forged one and reiterate that no leniency should be given to the appellants because he was sleeping over his right for preferring the appeal.

In these present circumstances, it is pertinent to mention here that the ad-interim order of injunction was allowed on 27.11.2020 and at that time pandemic of Covid-19 was prevailing throughout the Country. Ld. Counsel for the appellant also filed medical certificate of the appellant in this regard. At that time many people were also suffering from the 'after shock' of Covid-19. Moreover, Hon'ble Apex Court has provided one shield to all the appellant/petitioner who failed to file any appeal or application within stipulated period of time as prescribed under the Limitation Act.

Therefore, considering the rule of natural justice and considering the above noted circumstances, I find that chance can be given to the appellant.

Hence,

It is

Ordered

That the application preferred by the appellant under Section 5 of the Limitation Act is hereby allowed on contest without any order as to costs. Accordingly, the delay for preferring the appeal is here by condoned and appeal is admitted.

Fix 05.02.2025 for W.O. by the respondents and call for T.C.R.

D.A. to act accordingly.

Update CIS forthwith.

*Dictated & Corrected by me.*

*Civil Judge (Sr. Divn.), Bishnupur*

*Civil Judge (Sr. Divn.),  
Bishnupur, Bankura*