

Title Appeal No. 08 of 2025

Present : Sri Biswarup Bandyopadhyay, Chief Judge (WB 01133)

Order No. 05 dated 22.05.2025 :

The record is taken up for passing order upon the application filed u/s 5 of the Limitation Act, 1963 by the appellant/defendant praying for condonation of delay of 157 days on the grounds cited in the application.

The respondent/plaintiff contested the application by filing written objection denying the material averments mentioned in the application u/s 5 of the Limitation Act for condonation of delay.

Heard the Ld. Counsel appearing for the respective sides.

Considered the contentions made in the application u/s 5 of the Limitation Act, 1963 and the objection submitted thereto.

It is submitted on behalf of the appellant/defendant that the judgement and decree in the Ejectment Suit No. 133 of 2020 out of which the present Title Appeal arose was delivered on 01.08.2024 after closure of evidence of the defendant in the said suit on 23.07.2024 and in open Court, defendant heard that the date of argument of the suit would be fixed at the end of August, 2024; however, 15 days later, the then Ld. Advocate for the appellant/defendant came to know from the Case Information System (CIS) that the judgement had been delivered on 01.08.2024. It is submitted that the appellant/defendant was completely out of knowledge about the date on 29.07.2024 which was fixed for argument, neither passing of order on 01.08.2024. Thereafter, the appellant/defendant filed a Misc. Case being no. 112 of 2024 before the Ld. Trial Court for setting aside ex-parte order under Order 9 Rule 13 of Code of Civil Procedure which was finally dismissed on 13.01.2025.

It is further submitted on behalf of the appellant/defendant that the certified copy of judgement and decree dated 01.08.2024 was applied for on 17.12.2024 and the same was supplied on 31.01.2025 and after receiving such certified copy of the judgement and decree, the present Ld. Advocate was instructed to take all necessary steps on behalf of the defendant/appellant to prefer the present appeal in order to protect the right, title and interest of the appellant/defendant in respect of the suit premises. The grounds, as would be evident from the application filed u/s 5 of the Limitation Act, 1963, cited by the defendant/appellant is that there was no intentional latches or negligence on the part of the defendant/appellant in causing delay to prefer the appeal in due time and such delay occurred due to wrong proceedings initiated before the Trial Court for which the defendant/appellant was not at fault.

....contd.

....contd. Title Appeal No. 08 of 2025(ord. no. 05 dt. 22.05.2025)

Ld. Counsel appearing for the defendant/appellant supporting the contentions made in the limitation application placed his reliance on the decisions reported in (2018) 7 SCC 703 and 2015 Supreme (Tri.) 710 and accordingly submitted that the defendant/appellant has a sufficient cause for condonation of delay as prayed for.

Countering such submission, the Ld. Counsel appearing for the respondent/plaintiff submitted that after passing of the contested decree, the defendant/appellant instead of filing an appeal with malafide intention filed an application under Order 9 Rule 13 read with Section 151 of Code of Civil Procedure which was registered as Misc. Case No. 112 of 2024 and from the certified copy annexed with the Memorandum of Appeal it would appear that the defendant/appellant had applied for certified copy on 17.12.2024 which was ready for delivery on 13.01.2025 long after filing of the misc. case under Order 9 Rule 13 read with Section 151 of Code of Civil Procedure. It is submitted that the said misc. case under Order 9 Rule 13 read with Section 151 of Code of Civil Procedure was dismissed as not maintainable vide Order dated 13.01.2025 and the defendant/appellant was very much aware about the fate of the suit.

Ld. Counsel for the respondent/plaintiff also argued that the delay caused by the appellant for filing the aforesaid appeal is not properly explained and he is unable to explain so as he is not residing at the decretal property being permanent resident of Vishakhapatnam, after transferring the decretal property to one Amit Rajak who is presently occupying the same.

Now, on consideration of the rival contentions made in the limitation application and the objection submitted thereto, in the light of the argument advanced by the respective Counsels appearing for the parties, it appears that the Ejectment Suit was decreed on contest on 22.08.2023 by the Ld. Trial Judge and subsequently a misc. case being no. 112 of 2024 under Order 9 Rule 13 read with Section 151 of Code of Civil Procedure was filed under the misconception that an ex-parte order was passed by the Ld. Trial Judge.

The circumstances involved in causing delay of filing the regular appeal does not suggest that the defendant/appellant had any malafide intention to file the misc. case under Order 9 Rule 13 read with Section 151 of Code of Civil Procedure, neither any negligence or laches can be attributed to the defendant/appellant in preferring the appeal.

I find that the defendant/appellant demonstrated sufficient cause for condonation of delay as prayed for in his application and for the sake of substantial justice, he should not be non-suited.

....contd.

....contd. Title Appeal No. 08 of 2025(ord. no. 05 dt. 22.05.2025)

Hence, it is,

ordered

that the prayer for condonation of delay of 157 days stands allowed subject to payment of cost of Rs.2000/- (Rupees Two Thousand) only.

The appeal be registered and admitted.

Appellant/defendant is directed to file payment receipt by the next date.

Fix 25.06.2025 for filing payment of receipt by the appellant/defendant and further orders.

Dictated & corrected by me,

Chief Judge

Chief Judge
City Civil Court, Calcutta.