

Title Appeal No.34 of 2019
Present: Jayashree Banerjee, Chief Judge
Order No. 33 dated 12.03.2025:

Ld. Counsel for the appellant submits that the Section 5 application has been served upon the respondents who though have entered appearance yet have not filed any objection on the Section 5 application.

Be that as it may, Ld. Counsel for the appellant submits that there has been a delay of 2 years in preferring this appeal. It is the further contention of the Ld. Counsel for the appellant that this appellant resides out of India and the matter was being conducted by his brother. It is also his contention that he has written several letters to his brother who did not respond to the letter given by the appellant's lawyer to the brother of the appellant. However, ultimately when it came to the notice and knowledge of the appellant as regard the judgment and decree passed by the Ld. Trial Court and immediately thereafter appeal was preferred. It appears from the record that the Judgement and Decree is of 30.07.2016 and letters that are annexed with the Section 5 application, is of 2019 in which year the appeal was preferred. It is not acceptable to this Court that from 2016 to 2019 the appellant went on trying to know whether the brother of the appellant has preferred the appeal against the judgment and decree passed by the Ld. Trial Court. According to the Ld. Counsel appearing for the appellant, the Ld. Trial Court did not grant and/or pass any order as regard mesne profit though there was prayer for such mesne profit. The instant appeal is preferred only to ask for the mesne profit not granted by the Ld. Trial Court.

Having gone through the record and the letters that are annexed with the Section 5 application, this Court is not satisfied with the explanation that is advanced by the Ld. Counsel for the petitioner for the cause of delay.

In the given circumstances, the delay in filing the appeal is condoned subject to payment of costs of Rs.5,000/- to be deposited with the D.L.S.A., Kolkata and the receipt be submitted to the Bench Clerk by **17.03.2025**.

To date (17.03.2025) for further order after receiving of the receipt to be issued by the Office of D.L.S.A., Kolkata.

Let a copy of this order counter signed by the Bench Clerk be handed over the Ld. Counsel for the appellant for compliance.

Dictated & corrected by me:

Chief Judge

Chief Judge

City Civil Court, Calcutta.