

Title Appeal No.16 of 2026
Present: Sri Abhijit Som, Chief Judge (WB01127)
Order No.5, dated 20.04.2026:

On consent of the parties the application under Section 5 of the Limitation Act is taken up for hearing.

Heard Ld. Advocate for both sides.

It appears from the office note that the appeal is filed after a delay of 468 days. In the application for condonation of delay the appellants have taken the ground that the conducting advocate of the appellants did not inform of the passing of the decree. Moreover, the conducting advocate in the trial Court did not properly advise about the right of appeal. The delay in filing the appeal is due to lack of proper legal assistance and guidance by the Ld. Advocate who conducting the case on behalf of the appellants in the trial Court. The appellants had no knowledge of the date of the suit in the trial Court after 20.04.2024. They reposed complete reliance upon their advocate but he did not inform and advise them properly. Even the decree was executed and therefore the appellants having rendered homeless. So, the appeal could not be filed in time.

Having filed written objection the respondents have stated that the delay has not been properly explained by the appellants. It is further stated that the appellants failed to explain day to day delay and therefore the delay is not bona fide.

In **Concord of of India Insurance Co. Ltd. Vs. Nirmala Devi and Ors. AIR 1979 Supreme Court 1666**, it was observed by the Hon'ble Apex Court that a law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay, although there is no general proposition that mistake of counsel by itself, is always a sufficient ground. It is always a question whether a mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. Here, in this case, this Court finds that the appellants are all female folks and they might have little knowledge in Court proceedings. It cannot be denied that the conducting advocate has a duty to provide information and guidance to get the access to justice even after losing a case in the trial Court. It is the specific case of the appellants that the advocate of the trial Court did not advise them properly. However, the delay may not be treated of a few days. As per record the delay is of more than one year. Naturally the respondent is required to be compensated properly if the delay is condoned by this Court.

Contd.p/___

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Hence, it is

Ordered

that the delay in filing the appeal is condoned subject to payment of cost of Rs.10,000/- to the respondents.

The application under Section 5 of the Limitation Act is allowed.

Let the appeal be admitted.

Call for T.C.R immediately.

Fix 01.06.2026 for awaiting T.C.R, hearing of appeal and payment of cost.

Dictated and corrected by me,

Chief Judge,

Chief Judge,
City Civil Court, Calcutta.