

Misc. Appeal No.24 of 2025  
Present: Biswarup Bandyopadhyay, Chief Judge  
Order No.3/dated 11.06.2025:

This appeal has been preferred by the appellants under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 challenging the order dated 14.05.2025 passed by the Ld. Estate Officer Mr. J.P. Boipai under Section 5(1) of the said Act, whereby the appellants and all persons who may be in occupation of the premises in question have been directed to vacate the said premises within 15 days from the date of publication of the order.

Memo of Appeal is filed along with an application under Section 5 of the Limitation Act, 1963 praying for condonation of delay and a stay application praying for stay of operation of the impugned order passed by the Ld. Estate Officer.

The respondents entered appearance and filed written objection to the application under Section 5 of the Limitation Act, 1963, denying all the material averments mentioned in the application.

Ld. Counsel appearing for the appellants cites grave urgency involved in the matter and moves the application filed under Section 5 of the Limitation Act for condonation of delay and also prays for ad-interim order of stay of the operation of the impugned order passed by the Ld. Estate officer.

Ld. Counsel appearing for the respondents submits that due to shortage of time, the written objection to the stay application could not be filed.

The Office Report reveals that there is a delay of 11 days in filing the instant appeal. It is undisputed position that the impugned order was passed by the Ld. Estate Officer on 14.05.2025 and the instant appeal was filed on 06.06.2025.

Ld. Counsel appearing for the appellants submits that the impugned order passed under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act 1971(hereinafter referred to as the Act) which is required to be published in terms of the provisions contained under Section 5(1) was not published at all in compliance thereof and accordingly, there is no question of delay in preferring the instant appeal. He submits that for the sake of abundant caution so that the appellants do not have to face any questions on the point of delay in filing the appeal, have filed the application under Section 5 of the Limitation Act praying for condonation of delay on the grounds stated therein. He submits that the impugned order was served on the appellants on 15.05.2025 and even taking the date of serving into account, the period of limitation expired on 27.05.2025 which was within the on-going summer vacation. As a result, such appeal needed to be filed on 02.06.2025 i.e. on the very reopening day after summer vacation. It is submitted that due to circumstances beyond the control of the appellants, the appeal could not be filed within the prescribed time and it was filed on 06.06.2025 actually resulting in a delay of 5 days. It is submitted that the delay was not intentional or owing to any negligence or laches on the part of the appellants. It is further submission fo the Ld. Counsel appearing for the appellants that the Hon'ble Supreme Court by order dated 27.05.2025 passed in Civil Appeal No.6567/2025 which was preferred by the respondents themselves was pleased to give the appellants herein liberty to file an appeal against the order of eviction and also seek an ad-interim order of stay of the eviction order. The Ld. Counsel submits that in view of such pendency of the matter before the Hon'ble Supreme Court the appellants thought it prudent not to prefer appeal before 27.05.2025, otherwise the appellants could have prefer the appeal within 12 days from the date of passing of the impugned order. According to him, the cause shown is sufficient, as such delay should be condoned.

Ld. Counsel also prays for an ad-interim order of stay of the operation of the impugned order passed by the Ld. Estate Officer. In this Context, he submits that the appellant no.1 runs a floating hotel on river Ganges and on account of non-payment of alleged dues certain credit facilities, the appellant no.1 got admitted in Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code by the Financial Creditor. The appellant no.1 was admitted in CIRP on 10.01.2018 and subsequently thereafter with approval of 100% majority of the Committee of Creditor (COC), a plan given by the appellant no.2 being Brighter Side Renewable Energy Ventures Pvt. Ltd was approved and pursuant to approval of such plan appellant no.2 took over the management of the appellant no.1 and started to run the hotel in the same name of Manor Floatel Limited. He further submits that approval of Committee of Creator by 100% majority was acknowledged and approved by the Hon'ble National Company Law Tribunal, Kolkata Bench by passing an order approving the resolution plan on 30.10.2018. The Ld. Counsel submits that after the plan was approved the appellant no.2 forwarded the resolution plan to KoPT by communication dated 27.03.2019 and after taking over the management on and from 30.10.2018 the appellant no.2 has also appeared before the Estate Officer and has got copies of orders passed by the Estate Officer on and from 30.10.2018. He submits that the appellant has been paying the actual lease rental of Rs. 4,78,318/- per month from November, 2018 and till date they have been paying the same which the KoPT had accepted without any protest. Ld. Counsel appointed out a chart prepared showing the lease rental paid as per the plan till date in favour of KoPT. He submits that subsequent to 23.04.2019 no hearing was ever held before the Estate Officer Mr. A.K. Das. It is further submission of the Ld. Counsel that the impugned order of 14.05.2025 was passed by a different Estate Officer being Mr. J.P. Boipai, who has never heard the matter as the matter was last reserved for orders before the Estate Officer, Mr. A. K. Das on 23.04.2019. So, without hearing the parties the final eviction order was passed

after more than six years which itself makes the order a nullity, devoid of jurisdiction against the principles of natural justice. Ld. Counsel also submits that there is a grave urgency in the matter as because various officials of KoPT are coming to the Hotel of the appellants and are threatening the appellants to vacate the property.

On the other hand, Ld. Advocate General appearing for the respondents submits that delay cannot be condoned as the appeal has not been filed within the statutory period specified in Section 9 of the Act. He quotes the proviso clause of Section 9 of the Act and accordingly submits that the appellate officer may condone the delay only in exceptional cases and under compelling reason after the expiry of the stipulated period. He further submits that no such grounds involving exceptional circumstances or having compelling reason have been cited from the side of the appellants for condonation of delay and accordingly the delay caused should not be condoned in admitting the appeal. With regard to the prayer for ad-interim order of stay of operation of the impugned order passed by the Estate Officer, it is the submission of the Ld. Advocate General that there is an outstanding dues of around Rs.58 Crores in total to be paid by the appellants; and also around Rs.64 Lakhs per month to be paid as rent which they have ignored to pay. He also submits that submission made by the Ld. Counsel for the appellants questioning the authority of the present Estate Officer in passing the impugned order, is not sustainable in Law as no prejudice was caused to the appellants in the process, specially when notice to all the parties were issued by the Estate Officer giving all possible opportunities. In support of his such contention Ld. Advocate General relied upon the judgment of the Hon'ble Supreme Court reported in (2022) 2 Supreme Court Cases 301 and quoted paragraphs 29 and 31.

I have heard the rival submissions made by the Ld. Counsels appearing for the respective parties and considered the

contentions made in the application under Section 5 of the Limitation Act and the affidavit-in-opposition submitted thereto as well as the contentions with reference to prayer for ad-interim order of stay of the impugned order dated 14.05.2025 passed by the Ld. Estate Officer. It is an undisputed position that the Hon'ble Supreme Court in the pending Civil Appeal no.6567/2025, which has been preferred by the respondent no.1, by order dated 27.05.2025 was pleased to give the appellants (herein) liberty to file an appeal against the order of eviction and also seek an interim order for stay of the eviction order. In view of such order of the Hon'ble Apex Court, there is no impediment before this Court to hear the present appeal and other connected applications filed therein such as prayer for condonation of delay as well as stay of operation of the impugned order. It is also not disputed that the impugned order of eviction was passed by the Ld. Estate Officer on 14.05.2025. The appellants (herein) admitted that they have received the copy of the said order on 15.05.2025. There is no specific materials forthcoming at this stage regarding the specific date of publication of the order as required in terms of the provisions contained under Section 5 (1) of the Act. However, the appellants have come up with the application under Section 5 of the Limitation Act citing grounds for delay in preferring the appeal from the date of passing of the impugned order. The Hon'ble Supreme Court passed the order given liberty to the appellants (herein) to file an appeal and move application for interim order of stay on 27.05.2025. The period of limitation to prefer the appeal within 12 days, if counted from the date of the impugned order dated 14.05.2025, ends on 27.05.2025 itself. It sounds logical that the appellants herein thought it prudent not to prefer appeal before 27.05.2025 or prior to 27.05.2025 without any liberty being given by the Hon'ble Supreme Court when the Hon'ble Supreme Court was in scisin of the matter between the parties. Further, it is also not disputed position that on and from 24.05.2025 till 01.06.2025, there was on-going summer vacation in the City Civil Court, Calcutta. The grounds mentioned in the

application under Section 5 of the Limitation Act also demonstrate in detail some unavoidable and bona fide circumstances. The affidavit-in-opposition filed by the respondents does not disclose anything to attribute any in-action or want of bona fides to the defaulting party. It is well settled principle of Law that condition precedent for condonation of delay in filing an application or appeal is the existence of sufficient cause and whether such explanation furnished for the delay would constitute sufficient cause or not would be dependent upon the facts of each case and acceptance of explanation furnished should be the rule and refusal an exception when no negligence or inaction or want of bona fide can be imputed to the defaulting party.

Having considered the entire facts and circumstances in totality, I find the appellants have successfully demonstrated sufficient cause for delay in preferring the instant appeal and the proviso clause contained in Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 does not militate against such cause being accepted.

Accordingly, the delay is condoned allowing the application under Section 5 of the Limitation Act.

Thus the appeal stands admitted.

So far as the prayer for ad-interim order of stay of operation of the impugned order is concerned, it is evident that the premises is a floating running hotel on river Ganges situated at -/10, Kolkata Jetty, Strand Road, Kolkata-700 001 area having considerable financial involvement in managing the affairs in running the hotel. The impugned order passed by the Ld. Estate Officer specifically directed the appellants herein to vacate the premises within 15 days of the date of publication of the order and in case of failure to comply with such order within such specified period, the appellants are liable to be evicted from

the said premises and if need be, by the use of such force as may be necessary.

Evidently, in case if such order is executed, the entire situation become irreversible and the instant appeal preferred by the appellants would become infructuous. On going through the entire facts and circumstances cited in the Memo of Appeal, there is no doubt that the appeal needs to be heard on merit extending to both the sides opportunities of being heard.

In this context, ideal situation, in this context would be to grant an ad-interim order of stay for a limited period of time, pending the hearing of the stay application directing the appellants (herein) to continue to pay the amount which they have been paying i.e. Rs. 4,78,318/- per month towards rent.

Accordingly, ad-interim order of stay is granted staying the operation of order dated 14.05.2025 passed by the Ld. Estate Officer in Proceeding no.729 of 2005 till the next date on payment of the rent as referred to herein above.

Let the L.C.R be called for.

Fix 27.06.2025 for awaiting L.C.R, contested hearing of stay petition, objection, if any, in the meantime and hearing of appeal.

Dictated & corrected by me:

Chief Judge

Chief Judge

City Civil Court, Calcutta.