

Criminal Appeal No.91 of 2025

CNR – WBCS01-000494-2025

Present: Sri Sukumar Ray,
Chief Judge,
City Sessions Court, Calcutta,
JO Code No. WB00590

Order No.02 dated 31.07.2025

Today is slated for S,R, A.D and appearance.

Ld. Advocate for the appellant is present by filing hazira.

Ld. Advocate for the respondent no.1 is also present by filing hazira along with vakalatnama. Let it be kept with the record.

Hazira is filed on behalf of the respondent no.2.

As both the parties have entered into their appearance, so the application under Section 5 of Limitation Act is taken up for hearing.

By filing this petition under Section 5 of Limitation Act the appellant has prayed for condonation of delay of 1600 days in filing the Memo of Appeal.

Ld. Advocate for the appellant has prayed for condonation of delay and submits that the delay caused in filing the instant appeal is because on or about January, 2016 the appellant had been suffered with massive Brain Stoke and had been partially paralysed and for that reason he spent almost a year in ICU bed in unconscious state of mind and after discharging from the hospital he was almost bed ridden and was not in a position to move freely.

Ld. Advocate for the appellant/petitioner further submits that subsequently on 15.03.2021 as per advised of his conducting Ld. Advocate, he attended the Ld. Trial Court with his daughter in ambulance and Ld. Trial Court vide judgement and order dated 15.03.2021 convicted the appellant and thereafter he was discharged on bail with an undertaking to file appeal before this Court against the impugned order and judgement.

It is also contended by the Ld. Advocate for the appellant that the daughter of the appellant visited one Ld. Advocate to file an appeal against the impugned judgement and order and the said Ld. Advocate assured her that he would file the appeal and on depending the assurance of the said Ld. Advocate, the daughter of the appellant was busy to look after the appellant for his deteriorating health condition.

Ld. Advocate for the appellant/petitioner further submits that subsequently when the police personnel of Karaya P.S had been to the appellant house for the purposing of arresting him, he came to know that warrant of arrest had been issued against him and he also came to know that the Ld. Advocate appointed for conducting his case had also died after suffering from Covid-19 and no appeal had been filed against the impugned judgement and order dated 15.03.2021 before this Court. However in the process there was a delay of 1600 days in filing the instant appeal.

Ld. Advocate for the revisionist categorically stated that there is no intentional laches on the part of the applicant to prefer this revision. So, he prays for condonation of delay.

In support of his contention Ld. Advocate for the appellant filed xerox copies of medical documents by firisti.

In support of his contention, he has placed his reliance upon the judgement of the Hon'ble High Court at Calcutta in **Central Bureau of Investigation Vs Binod Kumar Maheswari & Ors** in **IA No. CRAN 1 of 2022, CRMSPL 50 of 2022.**

Ld. Advocate representing the respondent no.1/KMC leaves the matter upon the discretion of this Court.

On hearing both sides and on perusal of the petition under section 5 of the Limitation Act, I would like to say at the very outset that the law is well settled on the point that the appellant is to make out and substantiate his case of sufficient cause on which he relies in order to ask the Court to exercise in his favour the power contained in Section 5 of the Limitation Act. Further, it is also the duty of the appellant to explain the delay for every day that elapsed the period allowed by the said Act for filing the revision.

Due to massive Brain Stoke, death of his Ld. Advocate and the circumstances beyond the control of the appellant, he has not preferred the instant appeal within the stipulated period time.

It appears from the record that the impugned order was passed on 15.03.2021 and the revisionist has filed an application for certified copy on 04.07.2025 and he has obtained said certified copy on the same day and the instant appeal has been filed on 11.07.2025.

On bare reading of the prayer for condonation of delay and on perusal of the medical papers it appears to me that the appellant was suffering from serious illness and due to such precarious and serious health condition and due to unfortunate death of his conducting Ld. Advocate, the appellant could not file the instant appeal within the stipulated period and so the delay is condoned subject to payment of cost of **Rs. 5,000/-** to the District Legal Services authority, Calcutta. So the appeal is admitted, fixing **29.08.2025** for payment of cost (condition precedent) and final hearing of the appeal.

Ld. Advocate for the revisionist filed an application for staying the operation of the impugned order and judgment dated 15.03.2021 passed by the Ld. Senior Municipal Magistrate, Calcutta in connection with Case no. 87460 of 2015.

Heard. Considered.

On perusal of the record, it appears to me that he has an arguable case and if the stay is not granted, the appeal will be infructuous.

The prayer for staying the operation of the impugned order and judgment dated 15.03.2021 passed by the Ld. Senior Municipal Magistrate, Calcutta in connection with Case no. 87460 of 2015 is allowed for ends of justice.

The operation of the impugned order and judgment dated 15.03.2021 passed by the Ld. Senior Municipal Magistrate, Calcutta in connection with Case no. 87460 of 2015 is stayed till next date i.e. on **29.08.2025**.

Accordingly, recall WA, if issued.

Call for TCR.

Both the parties are directed to come ready on the next date fixed.

Let a copy of this order be sent to the District Legal Services authority, Calcutta for information.

Let a copy of this order be sent to the Ld. Trial Court for information.

Dictated & corrected by me

Sd/-

Chief Judge,
City Sessions Court, Calcutta.

Sd/-

Chief Judge,
City Sessions Court, Calcutta.