

Misc. Appeal No. 03 OF 2025
CIS NO. 04 OF 2025
JO CODE WB00669

Order No: 06, dt. 13.11.2025

Today is fixed for LCR and hearing of the appeal.

Appellant files hazira.

The respondent No. 1 and 2 are also present by filing haziras through their respective Ld. Advocates by separate sheets.

Ld. Advocates for the respondents both submitted that the present misc. appeal was not at all admitted and the petition u/S. 5 of the Limitation Act is pending for disposal. In view of the submission made by the Ld. Counsels for the respondents the case record is taken up for hearing of the petition u/S. 5 of the Limitation Act.

Perused the petition u/S. 5 of the Limitation Act filed by the appellant.

No written objection has been filed by the respondents, but verbally raised objection.

Ld. Advocate for the appellant submitted that the appeal is filed through power of attorney holder. Actually the present appellant is residing outside of the India. He came to India on 2nd week of August, 2025 and after executing the power of attorney it almost took one week for preparation of the appeal. Accordingly, there has been delay of 54 days in filing the instant appeal before this Court. The appellant was prevented by sufficient cause in filing the appeal. The appellant has a good chance of succeeding in the appeal.

Ld. Advocates for the respondent Nos. 1 and 2 both jointly submitted that the explanation of delay was not at all done properly in view of the solemn judgment passed by The Apex Court of India in various cases. They submitted that the ground for 54 days is a lame excuse and that cannot be condoned by any way. It is also submitted by the respondent that no document ever been filed by the appellant that the appellant is residing outside of the India. It is also submitted that the earlier suit was also filed with power of attorney holder and if that be so that power of attorney was sufficient to prefer this appeal. There is no need to prefer separate power of attorney to file the present appeal. The ground as mentioned in the petition is not at all correct state of affairs and just to delay proceeding this application is filed which is not at all bona-fide one and the Ld. Advocates for the respondents pray for dismissal of the application u/S. 5 of the Limitation Act with exemplary cost.

Having heard the Ld. Advocate for the petitioner and the materials available in the record it appears the initially the suit was preferred by the power of attorney holder and there is no need to prefer this particular appeal with separate power of attorney and to prefer the same there has been delay of 54 days as stated in the petition. The ground in my view is superficial, but the case should be disposed of on merit.

Accordingly, I am inclined to allow the application u/S. 5 of the Limitation Act with cost of Rs. 10,000/-(C.P.) each to be paid to the respondent Nos. 1 and 2.

Fix **10.12.2025** for payment of cost and further order.

Dict. & corrected by me

Sd/-
District Judge, Darjeeling

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District Judge, Darjeeling