

Civil Appeal No. 6 of 2025
CNR No. WBDJ070002062025
JO CODE : WB00659

Present : Sri Utpal Misra, District Judge, Kalimpong

Order no. 5, Dated : 24.03.2026

1. Both parties have filed their respective haziras.
2. Today is fixed for admission hearing of the instant appeal.
3. The record is taken up for admission hearing of the instant appeal along with another application under Order XLI rule 3A(1) CPC r/w Section 5 of the Limitation Act, 1963.

4. Ld. Lawyer for the appellant submits before this court that the impugned order was passed by the Ld. Civil Judge (Junior Division), Kalimpong on 22.08.2025 and on the said date, the Ld. Court heard the matter verbally and the date was posted to 15.10.2025. Accordingly, the conducting counsel's professional diary was posted and the appellant was under the bonafide impression that the order had been reserved for the next date of hearing i.e. 15.10.2025. Due to the long Puja vacation from 27.09.2025 to 07.10.2025, all concerned remained busy in their respective homes and subsequently, on 15.10.2025, the counsel of the appellant noticed on record that the order was already passed on the date of hearing and the appellant got surprised. But immediately after having come to know about the said order, the appellant had applied for certified copy of the said order of the Ld. Court and due to this bonafide mistake, the appellant could not file the appeal within the period of limitation. However, it took some time to prepare the memo of appeal and for all these bonafide reasons, there is delay as he could not procure the certified copy within the prescribed period of limitation and such delay is neither intentional nor deliberate and in the event of refusal of this application, the appellant will suffer irreparable loss and injury. So, he prays for condonation of the delay in filing the appeal.

5. Heard Ld. Lawyer for the respondent also.

6. Having heard the submissions of both sides and perusing the materials in the record, this court is of the view that the laches on the part of the appellant in filing the instant appeal was not intentional or deliberate and if the instant petition is not allowed then, the appellant will suffer irreparable loss and injury.

7. Hence, the delay is condoned and the appeal is admitted.

8. The instant application for limitation is thus accordingly disposed of.

9. It appears from the record that the appellant has also filed another application praying for staying of the impugned order on the ground stated therein.

10. Seen the application for stay of the operation of the impugned order of the Ld. Trial Court filed by the appellant.

11. Heard Ld. Lawyers for both sides.

12. Having heard both sides and perusing the materials in the record, this court is of the view that if the impugned order is not stayed, then the appellant will suffer

irreparable loss and injury and the respondent may proceed with the suit and the further proceedings will have an adverse effect on the fate of the instant appeal.

13. Accordingly, the impugned order dated 22.08.2025 of the Ld. Trial Court in connection with O.C. Suit no. 21/2023 is hereby stayed till 23.04.2026.

14. The petition is thus accordingly disposed of.

15. Let the LCR be called for.

16. To 17.04.2026 for LCR and further order.

Dictated & Corrected

Sd/-

District Judge,
Kalimpong

Sd/-

District Judge,
Kalimpong