

Order No. 12 dt. 07.5.25

Today is fixed for hearing of the sec. 5 petition filed by the claimant dt. 28.02.23 subject to filing of receipt of costs.

Both sides are present before this court and have filed hazira.

Receipt of costs paid by the claimant to DLSA Hooghly is found filed in the record.

The record is now taken up for hearing of the said petition filed by the claimant under sec. 5 of the Limitation Act

Ld Advocate for the Claimant at the time of hearing had submitted that the impugned order of dismissal for default was passed by this court on 04.01.23 in connection with L.A. Misc. Case No. 33/1998 against which the present Misc. Case should have been filed by the Claimant/petitioner on or before 03.02.23 but that the same was filed after a delay of about 25 days on 28.02.23 which delay was to the fact that the Ld Advocate for the Claimant took time to prepare the application. Ld Advocate for the Claimant prayed for condoning the said delay as under sec. 5 of the Limitation Act.

Ld Advocate for the Respondent raised no objection to the said prayer if costs be imposed upon the petitioner.

Heard both the sides.

Perused the petition and instant record. Considered.

It appears from the submission of the ld Advocate for the Claimant that there is no intentional laches on the part of the Claimant in the delay caused in preferring this application and the said delay appears to be beyond the control of the Claimant. The conduct of the Claimant does not suffer from lack of diligence in preferring his application as he depended upon his ld Advocate who could not file the misc case within time.

Hence, it is held that the Claimant has sufficient cause for not preferring the instant appeal within the prescribed period of limitation and as such, his petition under sec. 5 of the Limitation Act is hereby allowed but with costs of **Rs. 5000/- (five thousand only)** which must be paid by the petitioner to DLSA Hooghly on or within the next date fixed in this case.

The Misc. Case is admitted provided the above costs is paid by the claimant on or before the next date fixed in this case.

To 19.7.2025 for filing receipt of costs by the claimant and hearing of the Misc. Case.

Dictated & Corrected by

Sd/-

Addl. Judge, District 2nd Court
Serampore

Sd/-

Addl. District Judge, 2nd Court
Serampore.