

Present: Smt. Ratna Roy (J.O. Code - WB00914)
Additional District Judge, 1st Court, Serampore, Hooghly
T. A No. 72 of 2025
(C.N.R. No. WBHG05-001383-2025)

Order No. 11 Dated 25.06.2026

Both the parties filed their respective hazira.

Today is fixed for passing order in respect of the application under section 5 of the Limitation Act.

Accordingly, the record is taken up for passing order.

Vide the application under section 5 of the Limitation Act, the appellant herein had claimed that the respondent being the plaintiff had filed Title Suit no. 526/2015 before the Court praying for partition of the suit property. That after contested hearing, the suit was decreed in preliminary form vide judgment dated 08.10.2018. Subsequently, the respondent filed application for drawing up final decree in terms of the preliminary decree by way of appointing partition commissioner and after hearing the parties, the Court was pleased to allow the said petition and Ld. Commissioner, Sri. Kashinath Ghosh was appointed for making partition of the suit property. That although the appointment of the Ld. Partition Commissioner was made here in the year 2019, but the Ld. Commissioner at first delayed to cause survey of the suit property and subsequently failed several dates in filing the commission report. That from Order no. 55 dated 20.08.2024 it would be evident that no commission report had been submitted before the Ld. Court and as such the Court was pleased to fix 21.01.2025 for submission of commission report. That it would be further evident from the record that the Ld. Commissioner submitted his report on 05.11.2024 without giving intimation to the appellant and accordingly, the Ld. Court had fixed 20.05.2025 for acceptance of commissioner's report. That curiously subsequently on two occasions, the record was placed before the Ld. Court out of which the plaintiff/respondent filed E-assessment slip out of his own whims without having any order from the Ld. Court. That even if the plaintiff/respondent relied on the E-Assessment Slip then it should have been submitted to the Ld. Commissioner after serving a copy to the defendant/appellant as after getting the E-assessment copy, Ld. Commissioner was the competent person to adjudge the valuation of the property and to divide the property considering the valuation of the property but in this case no such procedure was followed. That the defendant/appellant was not at all aware of the report of the commissioner as such he had decided that after perusal of the commission report he would think/decide for preparing himself to make objection, challenging the report but he was not at all aware that the said date was fixed for acceptance of commission report and as a result, although from the order sheet, it would be evident that a hazira was filed but neither the appellant nor his Ld. Advocate was present in the Court and they also never made any submission for acceptance of the said report but the plaintiff/respondent might have somehow misled the Court and got commission report accepted by the Court behind the back of the appellant. That as both the parties reside in the same holding but in different mess, the appellant got some whisper from the respondent on

Present: Smt. Ratna Roy (J.O. Code - WB00914)
Additional District Judge, 1st Court, Serampore, Hooghly
T. A No. 72 of 2025
(C.N.R. No. WBHG05-001383-2025)

Contd., Order Dated 25.06.2026

07.07.2025 that he had managed to get final decree and that no body could do anything against his wish. Being surprised by such disclosure, the appellant immediately contacted his newly appointed Ld. Advocate on 07.07.2025 evening, who also became surprised to get such news and told the appellant that he would see the record and accordingly, on 08.07.2025, the Ld. Advocate made searching through his Ld. Junior Advocate and then came to know that the respondent was able to get the Commissioner's report accepted by the Court for drawing final decree subject to payment of stamp duty in connection with the suit on 20.05.2025. That the appellant as well as his advocate was of the notion that no commission report was submitted and with such notion, the Ld. Advocate of the appellant just filed hazira but did not come to contest the suit and taking such advantage, the respondent was able to get order for acceptance of commissioner's report which is very much prejudicial to the interest of the appellant. That the appellant being wrongly instructed filed one Misc. Case under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure before the Ld. Court below on 10.07.2025 and now being understood he filed this appeal. That it was an unintentional act on the part of the appellant as he was under the notion that the Commission Report had not been filed and no proceeding would be taken before submission of the Commission Report but from the aforesaid fact and circumstance, it was crystal clear that the Ld. Commissioner submitted his report on the date which was not fixed and for the same and as such neither the appellant nor his Ld. Advocate was aware of the submission of the Commission Report and failed to submit their objection against the Commission Report.

The appellant further claimed that he was all along vigilant to proceed with the suit and to submit his objecting against the acceptance of Commission Report but the circumstances made him victim. That if the appellant was aware that the respondent had been proceeding the suit and the respondent could take advantage for the absence of the appellant and would take opportunity to mislead the Ld. Court, the appellant would have been present before the Ld. Court or would have taken proper step. That it is also the claim of the appellant the appellant received the searching dated 08.07.2025 of Title Suit. No. 526/2015, so the appellant was unable to file the appeal within the period of limitation. He, however, filed the Misc. Case within one month from the date of his knowledge and was now filing the Appeal. There is however a delay of two months and eight days in filing of the Appeal. That although the appellant had filed the appeal after delay of more or less two months and eight days but actually he got information only on 07.07.2025 and on 08.08.2025 he was confirmed of the order. Thereafter, he filed the Misc. Case for setting aside ex-parte order on 10.07.2025 that is within the period of limitation but to avoid technicalities, the appellant has been compelled to file the appeal. There is no intentional breaches on the part of the appellant in filing the appeal at a delayed stage.

Present: Smt. Ratna Roy (J.O. Code - WB00914)
Additional District Judge, 1st Court, Serampore, Hooghly
T. A No. 72 of 2025
(C.N.R. No. WBHG05-001383-2025)

Contd., Order Dated 25.06.2026

The appellant thus prayed for condoning the delay in filing of the appeal.

The respondent by filing written objection denied all the averments of the appellant as stated in the application under section 5 of the Limitation Act. The respondent admitted the fact that he and the appellant reside in the same holding but in different mess and the fact that he had filed Title Suit No. 526/2015 praying for partition of the suit property. He, however, denied that the suit was decreed in preliminary form on contest. The respondent claimed that the appeal has been filed out of grudge, jealousy and malice towards the respondent. The respondent further claimed that the final decree was passed after hearing both sides and that delay in filing of the appeal was calculated and strategic attempt to resist the partition of the suit property by metes and bounds. The respondent thus prayed for rejection of the application under Section 5 of the Limitation Act.

Ld. Advocate for the appellant while making submission in respect of the application stated that his client had come to him and told him that he had not moved the Court for acceptance of the Commission Report. That his client came to know about the fact that the final decree was drawn in Title Suit No. 526/2015 only on 07.07.2025. On 08.07.2025 searching report was obtained from the Court and on that date his client was confirmed about the fact that the final decree of Title Suit 526/2026 was drawn by the Court. That if the date of knowledge of the appellant of the final decree is considered then the appeal has been filed within time.

Ld. Advocate for the appellant further submitted that on 20.05.2025 only hazira was filed on behalf of the appellant in Title Suit No. 526 of 2015 but no submission was made from the side of the appellant for acceptance of the report of the Partition Commissioner. That the appellant is a Civic Volunteer. He was attached to the Court and had somehow mislead the Court and got the Commission Report accepted by the court and got the final decree drawn.

Ld. Advocate for the appellant referred to the decisions of the Hon'ble Calcutta High Court cited in 2026(1) Indian Civil Cases (Cal.) and stated that the Hon'ble Court had held that provision of the Section 5 of the Limitation Act must be construed liberally to advance substantial justice. That hyper technical approach should be avoided.

Further, referring to the decision of the Hon'ble Calcutta High Court cited in 2012(4) ICC 64, Ld. Advocate stated that the Hon'ble Court had condoned delay of 2380 days in filing of appeal. Referring to the decision of the Hon'ble Calcutta High Court in 2026(2) Indian Civil Cases (Cal.), Ld. Advocate stated that the Hon'ble Court had held that merit of case is not required to be considered while deciding application for condonation of delay.

Ld. Advocate for the respondent opposing the submission as made on behalf of the appellant stated that the appellant had come to appeal making apprehension against the Ld. Trial Judge. He further

Present: Smt. Ratna Roy (J.O. Code - WB00914)
Additional District Judge, 1st Court, Serampore, Hooghly
T. A No. 72 of 2025
(C.N.R. No. WBHG05-001383-2025)

Contd., Order Dated 25.06.2026

stated that no document has been filed from the side of the appellant that he was not present in the court on the date of order or that he was not aware of the Commission Report, being filed in Title Suit No. 526 of 2015.

Ld. Advocate for the respondent further submitted that the Preliminary decree of the Title Suit, being no. 526/2015 was passed on admission and not on contest. He also stated that the Misc. Case no. 24/2025 which had been filed by the appellant under Order 9 Rule 13 of the Code of Civil Procedure is still pending to be disposed off. During pendency of the said Misc. Case the filing of this appeal an order passed by this Court will be double jeopardy upon the respondent. Ld. Advocate further submitted that on plain reading of the application under Section 5 of the Limitation Act, no explanation of delay can be found. That it is evident that the delay in filing of the appeal was due to laches on the part of the appellant.

On going through the application under Section 5 of the Limitation Act, I find that the entire application has been drafted as if the Title Suit No. 526/2015 out of which this appeal arose was filed in this Court. On going through the entire application under Section 5 of the Limitation Act, it cannot be ascertained as to in which Court Title Suit No. 526/2025 was filed and from order of which Court, the appellant had come in appeal and prayed for condoning the delay in filing of the appeal. The application under Section 5 of the Limitation Act was thus defective.

The appellant had in the application under Section 5 of the Limitation Act stated that he was all along vigilant to proceed with the Title Suit No. 526/2015. The appellant claimed that Title Suit No. 526/2015 was decreed in Preliminary form on contest but from the certified copies of orders as filed from the side of the appellant itself, I find that in Title Suit No. 526/2015, the appellant had filed an application under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure by way of affidavit and on basis of the said application, the Ld. Trial Court had decreed Title Suit No. 526/2015 in preliminary form on admission. The appellant who says he was always vigilant in proceeding with the Title Suit No. 526/2015 is unaware of the very fact that the said Title Suit was not decreed on contest but on admission, which itself shows how vigilant the appellant was in proceeding with the Title Suit No. 526/2015.

From the application under Section 5 of the Limitation Act and the submission made on behalf of the appellant, the Ld. Advocate wanted to apprise this Court that as the respondent, who is a Civic Volunteer he had somehow mislead the Trial Court and got the final decree drawn behind the back of the appellant. The Ld. Advocate during his submission also told this Court that the respondent was attached to the Trial Court and therefore, he misled the Trial Court and got the final decree drawn in his favour.

Present: Smt. Ratna Roy (J.O. Code - WB00914)
Additional District Judge, 1st Court, Serampore, Hooghly
T. A No. 72 of 2025
(C.N.R. No. WBHG05-001383-2025)

Contd., Order Dated 25.06.2026

In this regard, I am constrained to say that Civic Volunteer's are not attached to any Court nor was the respondent at any time was attached to the Trial Court in any manner. Further, the very saying that the respondent being a Civic Volunteer misled the Trial Court in drawing the final decree amounts to putting question upon the credibility of the Trial Court.

On perusal of the Order No. 60 Dated 20.05.2025 passed in Title Suit No. 526/2015, I find that both sides had field hazira in the suit on that date. From the order, it is found that only after verbal submissions being made by Ld. Advocate of both sides, the Trial Court had accepted the Commissioner's Report and thereafter made the Preliminary decree final. The very filing of hazira means that the appellant was very much aware of the date fixed in that case. When the appellant says that he was very much vigilant in proceeding with the Title Suit, when hazira was filed by him 20.05.2025 in the Title Suit, it can be said that the appellant was very much present before the Trial Court on the said date and was aware of the proceeding of the suit on that date. No documents or any other evidence is brought by the appellant that even after hazira was filed by him, his Ld. Advocate has not made any submission on his behalf on that day for acceptance of the commissioner's report. No petition has been filed on behalf of the appellant to bring his Ld. Advocate who was holding Vakalatnama on his behalf in the Title Suit to say before this Court that he had not made any submission before the Trial Court on 20.05.2025 for acceptance of the commission report. A person who says he is vigilant with the proceedings of any case is bound to have all information about the case.

For condonation of delay, each day delay must be explained. The application under Section 5 of the Limitation Act does not explain each day delay.

I agree with the submission of the Ld. Advocate for the appellant that the provision of section 5 of the Limitation Act should be construed liberally. But in this case, I find that mala fides are writ large on the conduct of the appellant. The conduct of the appellant in belated filing of this appeal in my opinion was a calculated and strategic attempt to resist the partition of the suit property by metes and bounds.

In view of the above discussions, I do not find any ground to condone the delay in filing of this appeal. Hence, it is

ORDERED,

that the application under Section 5 of the Limitation Act stands rejected on contest without cost. The appeal is accordingly disposed of as being barred by limitation.

Dictated & corrected by me.

SD/-Ratna Roy.
Additional District Judge,
1st Court, Serampore, Hooghly.

SD/-Ratna Roy.
Additional District Judge,
1st Court, Serampore, Hooghly.