

Title Appeal No. 84 of 2025
CNR NO. WBHW01 003120 2025
Present: Abhijit Som,
District Judge, Howrah.
J.O. Code – WB01127

Order No. 04 dated 08.09.2025.

The application under Section 5 of the Limitation Act is taken up for hearing.

Heard learned Advocate on behalf of both sides.

Learned Advocate on behalf of the appellant submits that due to prolonged illness and the destitute condition of the appellant, he was prevented from filing the appeal in time. It is stated that the ground for delay is genuine and not intentional one.

On the other hand, by filing written objection, the respondents contested the application under Section 5 of the Limitation Act. It is submitted that the appellant was negligent in causing the delay. However, he submits that in case the delay is condoned, the appellant may be saddled with heavy cost.

It appears from the office note that the appeal is filed after a delay of 998 days. The decree was passed on 22.07.2022. In the decision **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and Ors. (2013) 12 SCC 649**, the Hon'ble Supreme Court observed that *there is distinction between inordinate delay and delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the later it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for liberal delineation*. In the instant case, the delay of 998 days may not be considered as inordinate delay and therefore, a liberal approach may be taken in condoning delay.

It may not be stated herein that the delay is of a short duration of few days and therefore, strict approach is to be taken. However, in another decision, **Collector Land Acquisition v. Mst. Katiji & Ors. AIR 1987 SC 1353**, the Hon'ble Apex Court observed that *the legislature has conferred the power to condone delay by enacting Sec. 5 of the Indian Limitation Act of 1963 in order to enable Courts to do substantial justice to parties by disposing of the matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable Courts to apply law in a meaningful manner which serves the ends of justice that being the life - purpose of existence of the institution of Courts. It is also observed by the Hon'ble Apex*

Court that “every day’s delay must be explained” does not mean that a pedantic approach should be made. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice defeated.

The Hon'ble High Court in **the State of West Bengal vs. Smt. Ila Giri. 2014 (3) CLJ (Cal) 271** is of the opinion that *any meritorious appeal would not be dismissed by any Court of law merely because of insufficiency of the explanation for delay.*

In view of the above, this Court finds that the delay in filing the appeal may be condoned, if the respondents are compensated by cost.

Hence, it is

Ordered

that the application under Section 5 of the Limitation Act is allowed. The delay in filing the appeal is condoned, subject to payment of cost of Rs. 20,000/-.

The appeal is admitted.

Learned Advocate on behalf of the appellant prays for two months time to pay the cost. Accordingly, the appellant is directed to make payment of cost of Rs. 10,000/- by September, 2025 and rest amount of Rs. 10,000/- positively by November, 2025.

The stay application is taken up for hearing.

Heard both sides.

It appears that the tenancy was of Rs. 65/- per month. However, it is stated that the property is situated at a prima locality by the side of the road in Howrah Town.

Having considered the submission of both sides, the prayer of stay of operation of judgement and decree of Title Suit No. 50 of 2014 and the further proceeding of consequential Execution Case No. 56 of 2023 pending before the learned Civil Judge (Jr. Division), 3rd Court, Howrah is allowed for a period of 12 weeks from the date of this order, subject to payment of occupational charge of Rs. 500/- per month, beginning from the month of September, 2025, to be paid by 7th day of each succeeding month.

It is made clear that in the event the present appellant fails to deposit the occupational charges as directed even for a single month the order of stay as passed by this Court shall stand vacated automatically.

It is, however, made clear that the respondents are not permitted to withdraw such occupational charges as deposited by the appellant in the learned Trial Court except with the leave of the Court.

With such observation, the stay application is thus disposed of.

Call for L.C.R.

Fix 26.11.2025 for L.C.R.

Let a copy of this order be sent to the learned Civil Judge (Junior Division), 3rd Court, Howrah for information.

Dictated & corrected by me.

D. J.

District Judge, Howrah.