

Misc. Appeal No. 9 of 2025
CNR No. WBHW060001032025

Present : Mr. Mintu Mallick, Additional Dist. & Sessions Judge, Amta, Howrah.
(J.O. Code : WB00694)

Order No. 3 dated 25.08.2025 :-

In view of earlier order, the instant Miscellaneous Appeal is taken up for hearing on the point of admission along with the application under Section 5 of the Limitation Act.

Heard the Learned Advocate for the Appellants at length. Learned Advocate for the Appellants submits that the Appellants herein, therein the plaintiffs filed the Title Suit being No. 95 of 2023 along with a separate application under Order 39 Rule 1 & 2 of Civil Procedure Code praying for an order of injunction against the defendants therein herein the Respondents. In the said Title Suit while allowing the application under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure on 20.04.2024 the Learned Civil Judge (Junior Division) at Amta, inter-alia recorded "As regards the construction over the suit property it will be decided after going into the merits of the case and taking evidences."

The grievances of the Appellants is that such a lone observation of the Learned Civil Judge (Junior Division), Amta, Howrah, has virtually restrained the plaintiffs from enjoying the fruits of the injunction order and has caused serious prejudice to the plaintiffs, herein the Appellants.

Being so prejudiced the plaintiffs therein, herein the Appellants, again filed an application under Order 39 Rule 4 of the Code of Civil Procedure praying for modification of the ordering part but that was turned down by the Learned Civil Judge (Junior Division), Amta, Howrah, on 10.04.2025.

Being so aggrieved by the order dated 10.04.2025, the instant Appeal has been preferred by the Appellants.

Learned Advocate appearing for the Appellants further submits that the Learned Court below ought to have allowed the prayer in connection with the application under order 39 Rule 4 Read with Section 151 of the Code of Civil Procedure.

Perused the impugned order dated 10.04.2025 and documents furnished by the plaintiff/Appellants.

Needless to say that the plaintiff/Appellant has put forward a debatable case involving substantial question of law and fact. The Learned Advocate for the Appellant further submits that there is a delay of 33 days in filing the instant Appeal.

Perused the petition. The petition filed under Section 5 of the Limitation Act explaining delay of 33 days of filing the instant Miscellaneous Appeal seems to be bonafide one. Accordingly the delay is condoned and the instant Miscellaneous Appeal be brought on record as admitted.

The Appellant is directed to take appropriate steps for causing service of Notice to the other side and thereby to file any Affidavit before the matter is taken up next.

Fixing 04.11.2025 for filing Affidavit showing service.

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Contd. Order No. 3 dated 25.08.2025 :-

Let the Original Case Record in connection with Title Suit No. 95 of 2025 be called for from the Learned Civil Judge (Junior Division), Amta, Howrah.

Let a copy of this order be transmitted to the Learned Civil Judge (Junior Division), Amta, Howrah, for information and necessary action.

Dictated & corrected by me.

Additional District Judge,
Amta, Howrah

Additional District Judge,
Amta, Howrah