

Title Appeal No. 09 of 2023
C.N.R. No. WBJP01-001959-2023

Order No. 09, dated – 08.04.2024,

Learned lawyers for the contesting parties are present by filing haziras.

Today's date is fixed for passing order in respect of application for condonation of delay filed u/s 5 of the Limitation Act.

On perusal of the materials available before this Court, it appears that primary contention of the appellant happens to be the fact that the instant suit under Appeal was disposed of by an ex-parte order of which he had no knowledge. According to the learned lawyer for the appellant, after the appellant came to know about the impugned order, his client has filed the instant Title Appeal within period of limitation. He cited decision of the Hon'ble Supreme Court of India passed in Civil Appeal No. 460/1987 in the case of Collector, Land Acquisition, Anantanag and another v/s Mst. Katiji and others.

If contention of learned advocate that he has filed the instant suit within period of limitation vide date of knowledge appears correct to him, then he would have no reason to file the instant petition for condonation of delay. It is definite that a statutory right accrues in favour of a party when the other side makes delay beyond the period of limitation in filing an application, Suit or Appeal. However, equitable justice demands that opportunity should be given to the side who agitates against the correctness of an order or judgement. Right accrued by reason of delay may be compensated by directing the party in default to make payment of cost to the aggrieved party. The ground as made out in the instant application for condonation of delay cannot be said to be false at the threshold.

Accordingly, prayer for condonation of delay filed u/s.5 of the Limitation Act on behalf of the Appellant stands allowed subject to payment of cost of Rs.3000/- to be payable by the appellant out of which a sum of Rs.2000/- shall be paid to the respondent and rest amount of Rs.1000/- shall be paid to the credit of District Legal Services Authority, Jalpaiguri.

Fix 30.04.2024 for filing receipts showing payment of cost and admission hearing.

Dictated & corrected,

District Judge, Jalpaiguri

District Judge, Jalpaiguri