

Title Appeal No.03 of 2022
C.N.R. No. WBJP01-002230-2022

Order No.48, dated – 16.07.2026,

Today is fixed for filing a petition under Section 5 of the Limitation Act on behalf of the appellant and further order.

Both sides file hazira through their respective Ld. Advocate.

Application / petition under section 5 of the Limitation Act, 1963 has been filed today on behalf of the Appellant. Copy of the same has been served upon the Ld. Advocate for the respondents and the same has been duly received.

No written objection has been filed on behalf of the Respondents.

Now the matter is taken up for hearing.

The application / petition under sec.5 of the Limitation Act is heard and considered.

It is the case of the appellant/ petitioner that the date of delivery of judgement and decree is on 31.03.2022 and the application has been filed for obtaining certified copy of the same is on 06.04.2022 and as such the period which was required for obtaining certified copy of the judgement and decree ought to be calculated and be exempted from the calculation of limitation as per the provision of section 12 of the Limitation Act, 1963 and as such, the Appellant / petitioner will get benefit for the condonation of delay in filing the Appeal, so far the statutory period is concerned and the delay be condoned and Appeal be admitted.

In opposing this application, Ld. Advocate appearing for the Respondent Nos.1 & 8 has contended that delay should be explained reasonably and with sufficient cause. However, he has submitted for passing necessary order.

After going through the petition and upon perusal of the record and after going through the office endorsement on the back side page of the Memo of Appeal and after going through the certified copy of judgement and decree as filed with the Memo of Appeal and considering the submission of the Ld. Advocate for the respective sides, it appears to this court that date of judgement and decree is on 31.03.2022 and application has been filed for obtaining certified copy on 06.04.2022 and the same was ready for delivery on 02.05.2022, as it appears from the office endorsement on the backside of first page of the certified copy of judgement and decree, however, limitation period will run thereafter. However, delay has been properly explained by the Appellant with sufficient cause. Over and above, the Appellant / petitioner is also entitled to get benefit under section 12 of the Limitation Act, 1963, since application for obtaining certified copy of the impugned judgement and decree had been made within the statutory period.

In view of that, delay may be condoned and accordingly Application under section 5 of the Limitation Act, 1963 is allowed and Appeal is admitted after condoning the delay.

Upon perusal of the record, it appears that Appeal is already running ex-parte against Respondent Nos.2 & 3 and till this date no show-cause has yet been filed on behalf of the Respondent No.4, 5, 6 & 7. In view of that, this Appeal also be heard ex-parte against the Respondent Nos.4, 5, 6 & 7 and accordingly, same is also fixed exparte against them.

Since already Respondent Nos.1 & 8 have appeared and contesting the present Appeal, fresh service is exempted.

Next date be fixed for hearing of the Appeal on contest against the Respondent Nos.1 & 8 and ex-parte against the Respondent Nos.2 to 7.

Fix 31.08.2026 for hearing of Appeal.

Dictated & Corrected by me

District Judge, Jalpaiguri
(WB01135)

District Judge, Jalpaiguri
(WB01135)