

Criminal Appeal No. 06 of 2025
C.N.R. No. WBJP01-003778-2025

Order No. 07, dated – 02.06.2026.

Today is fixed for hearing of application under section 5 of the Limitation Act and filing of W.O.

Hazira has been filed on behalf of the appellant and the respondents Nos.5 to 7 through their respective Ld. Advocate.

None appears on behalf of the State of West Bengal.

Written objection has been filed today on behalf of respondents Nos.5 to 7.

Now the application under section 5 of the Limitation Act is taken up for hearing in presence of both the sides.

Same is heard and considered.

It is a case of the appellant / applicant herein that the instant Appeal has been preferred against the order dated 19.09.2024 passed by the Ld. Judicial Magistrate, 3rd Court, Jalpaiguri (in-charge) in Misc petition case No.99/2023. However, the present Appeal has been preferred at a belated stage after one year from the date of passing of the impugned order dated 19.09.2024. It has been also contended on behalf of the appellant that delay has been properly and reasonably explained and mainly due to personal illness of the appellant herself and her mother, the Appeal could not be filed in time and in support of his contention, some documents have been submitted before this court regarding illness of the appellant herself as well as her mother. It has been also contended on behalf of the appellant that there is good ground for preferring this Appeal and there is high chance of success both in respect of point of law and point of fact, as it has been dealt with by the Ld. Trial Court in the order impugned. In view of that, the application under section 5 of the Limitation Act may be allowed and Appeal be admitted for hearing and necessary order may be passed in this regard. In support of his contention, Ld. Advocate appearing on behalf of the appellant has referred some decision reported in S. Ganesharaju (Dead) through LR's. and another V. Narasamma (Dead) through Lrs. And others, (2013) 11 Supreme Court cases 341, wherein it has been observed by the Hon'ble Court that the delay is a matter of discretion of the court, but section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. It has been further observed by the Hon'ble Apex Court that in this matter with not length of delay alone but acceptability of the explanation is the criterion in as much as sometimes small delay may be uncondonable due to want of acceptable explanation whereas in some cases, long delay can be condoned on satisfactory explanation. With reference to this decision, Ld. Advocate engaged by the legal aid, appearing on behalf of the appellant has contended that delay may be condoned in preferring this appeal and the same be admitted.

In opposing this contention, written objection has been filed on behalf of the respondents Nos. 5 to 7. It has been contended on behalf of the respondents that in the present application the appellant has utterly failed to explain as to what prevented her from at least contacting her Ld. Advocate applying for certified copy of the impugned order or taking preliminary legal steps within the prescribed limitation period, when the appellant admittedly remained mentally active, educationally engaged and sufficiently capable of pursuing admission formalities for higher legal studies during the very same period. It has

also been contended that condonation of delay under section 5 of the limitation Act is not a matter of right but a discretionary and equitable relief. Therefore, a litigant seeking such indulgence for condonation of long delay is required to establish utmost bonafide, vigilance, diligence, whereas in the present case, the appellant has failed to explain her absence of taking proper steps before the court for a conspicuously long period and as such this Appeal as preferred in a belated stage is nothing but a misleading and fabulous and fictitious activities on the part of the appellant by preferring the same in much delayed stage and institution of the present delayed Appeal is nothing but coercive pressure tactics and also designing collateral harassment mechanisms against the respondents. Over and above, delay regarding illness of both the appellant as well as her mother could not be supported with sufficient cause within the meaning of section 5 of the Limitation Act and in this regard, Ld. Advocate appearing on behalf of the respondents has referred a decision of the Hon'ble Supreme Court reported in Basawaraj & Anr. V. Special Land Acquisition Officer, 2013 (14) SCC 81 wherein it has been observed by the Hon'ble Apex Court that law of limitation must be applied with all its rigour prescribed by the Statute and that courts cannot condone delay merely on sympathetic or equitable considerations in absence of genuine and sufficient cause. He has also referred another decision of the Hon'ble Supreme Court reported in P.K. Ramachandran V. State of Kerala, AIR 1998 SUPREME COURT 2276 wherein the Hon'ble Apex Court has also held that law of limitation may harshly affect a particular party but it has to be applied with full force when the statute so prescribes and courts cannot extend limitation on equitable ground. With reference to these decisions, Ld. Advocate appearing on behalf of the respondents has prayed for dismissal of the present application filed under section 5 of the Limitation Act seeking condonation of enormous and unexplained delay. Accordingly, Appeal be also dismissed.

Upon perusal of the application as filed on behalf of the appellant under section 5 of the limitation Act and the written objection filed by the respondents nos.5 to 7 and after going through the record and also considering the submission of the Ld. Advocate appearing on behalf of the appellant and the objection as raised on behalf of the respondents Nos.5 to 7, it is a view of this court that it is the principle of law of limitation that delay must be explained in the application under section 5 of the limitation Act with sufficient cause with reasonable explanation and it is true that day to day explanation of delay is not required but explanation must be reasonable and with sufficient cause. In the present case, though a long delay has been mentioned with a very cryptic manner on the part of the appellant in her application under section 5 of the Limitation Act but it is to be considered how far that explanation is reasonable with sufficient cause. Delay in preferring the present Appeal has been mainly explained with the cause of illness of the appellant herself as well as her mother and the documents as submitted at the time of hearing definitely supports such issue of illness on the part of the appellant herself as well as her mother. As per observation of the Hon'ble Apex court, it is true that in the name of invoking discretionary power by the court in condonation of delay lenient approach should not be taken into consideration, rather pragmatic approach should be taken by the court in assessing the delay as to whether explained with sufficient and reasonable cause. In the present case, there is no such disparity of this explanation so far as reasonability is concerned in the present case.

In view of that, this court is inclined to accept the explanation as made on behalf of the appellant in condonation of delay in preferring the present Appeal and as such the application under section 5 of the Limitation Act as filed on behalf of the appellant for condonation of delay in preferring the present Appeal is to be allowed and delay be condoned.

Accordingly, the application under section 5 of the Limitation Act filed on behalf of the appellant stands allowed and delay in preferring the Appeal is hereby condoned.

The present Criminal Appeal is hereby admitted.

Fix 22.06.2026 for hearing of this Appeal.

Dictated & Corrected by me

Sessions Judge, Jalpaiguri
(WB01135)

Sessions Judge, Jalpaiguri
(WB01135)