

W.B.S E A 03 of 2025.
[CNR No WBPS 01-000057-2025]
Before – Ashutosh Kumar Singh- Ld. Chief Judge.

06.

22/04/2025.

Today is fixed for hearing of the matter in presence of the parties.

Appellant files hazira.

Appellant also files notarized attested photocopies of some medical documents.

Respondent no-2 also files hazira.

Respondent no-2 also files affidavit-in-opposition

No steps taken by Respondent no-1.

On call, Appellant and Respondent no-2 is found present through their respective Ld. Advocates.

But on repeated calls, neither Respondent no-1 nor anybody on her behalf appears.

Ld. Advocate for the Appellant prays that his application u/s 5 of Limitation Act dated 10-02-2024 may be taken up for hearing.

Ld. Advocate for the Respondent no-2 raised no objection.

Accordingly, the same is taken up for hearing.

By filing the instant application, the Appellant has prayed for condonation of delay of 162 days in filing the instant appeal.

Ld. Advocate for the Appellant at the time of hearing submitted that the impugned order passed by the Ld. Referee, against which the instant Appeal has been filed by the Appellant, was passed on 31st July, 2024. That the Appellant being a private school, its legal matters are being looked after by senior accountant namely one Mr. Pawan Kumar Jha. The impugned order was placed before said Pawan Kumar Jha on 20th August, 2024. That on and from 01/09/2024, said Pawan Kumar Jha fell seriously ill and was recommended complete rest for a period of four months ie for the period from 1st September, 2024 to 5th January, 2025. That after recovery of his illness, on 6th January, 2025, said Mr. Jha could meet with Ld. Advocate and started taking further steps into the matter by consulting with different

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Ld. Advocates. Meanwhile , it was detected that few documents were missing in connection with the instant matter. Finally, the said documents were traced out and after consultation and advice of different Advocates, the instant appeal has been preferred u/s 14(6) of the West Bengal Shops & Establishment Act , 1963 by the Appellant on 10-02-2024. But during this process, there was a delay of 162 days in filing of the instant Appeal, which is after the expiry of the statutory period of 30 days.

In support of his contention, Ld. Advocate for the Appellant submitted that the Appellant has filed today the notarized attested photocopies of the medical certificates and prescriptions issued in favour of said Mr. Pawan Kumar Jha.

It is further argued that the Appellant has tried to explain each and every days delay in filing of the appeal to the best of its ability and there was no intentional negligence on the part of the Appellant. It is further pointed out that the date of placing the order of the Ld. Referee before the said Mr Jha being 20/08/2024 has not been denied by the Respondent no-2.

Relying on a decision reported in (1987) 2 Supreme Court Cases 107 titled as Collector, Land Acquisition Anantnag and another vs Ms Katiji and others, he argued that in the case of Section 5 of Limitation Act, the Court should adopt a liberal and justice-oriented approach and prayed for condonation of the delay.

Against, the petition, Respondent no-2 has filed affidavit-in-opposition denying all the material contentions made out in the application.

At the time of hearing, Ld. Advocate for the Respondent no-2 raised vehement objection and submitted that when the proceedings were going before the Ld. Referee, there, the matter was looked after on behalf of the Appellant not only by Mr. Pawan Kumar Jha but also by one Mr. Saibal Dutta, and both have knowledge of the case. That Pawan Kumar Jha was a mere

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accountant and has no authority to deal regarding the legal matters. Nothing is being said by the Appellant regarding the absence and not taking steps by the said Mr. Saibal Dutta.

It is also submitted that the Appellant is silent about the date of receipt of the order from the Office of the Ld. Referee , only emphasizing that the same has been placed before said Mr. Pawan Kumar Jha on 20/08/2024. It is further argued that the impugned order was passed on 31-07-2024 and during normal course of postal business, it should not take more than three to four days to the delivery of such orders by post to the Appellant. Therefore, the story of getting knowledge of the order on 20-08-2024 by the Appellant cannot be believable.

Ld. Advocate for the Respondent no -2 further challenged the medical documents furnished by the Appellant and argued that not a single medical investigation / test has been suggested by the doctor concerned. Besides, the doctor concerned is a cardiologist whose issuance of such prescriptions is also doubtful. It is further argued that there was no sufficient cause shown by the Appellant regarding the delay in filing of the Appeal within the statutory period of one months which expired on 31/08/2025.

It is further argued that in the proceedings before the Ld. Referee, the Appellant has admitted the claim of the Respondent no-2, as such, there is no scope for condonation of delay and admission of the appeal itself. There was willful abandonment of the matter on the part of the Appellant before the Ld. Referee .

It is further submitted that the West Bengal Shops & Establishment Act, 1963 is a beneficial legislation formulated for the benefit of the employees and the being the employer, the Appellant is trying to drag the proceedings. Relying in decisions reported in (2008) 17 SCC 448 titled as Pundlik Jalan Patil vs

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Executive Engineer, Jalgoan Medium Project and Anr, Judgment dated 29-08-2024 in MAT 1057 of 2024 by the Hon'ble Division Bench of the Hon'ble High Court at Calcutta and (2001), he prayed for rejection of the petition with cost.

In reply, Ld. Advocate for the Appellant distinguished the citations reported in (2008) 17 Supreme Court Cases 448 by arguing that in the said case, there was a delay of 1724 days in preferring the Appeal whereas , Appellant's case is condonation of delay of only 162 days. In the case of another decision as pronounced in the Judgment dated 29-08-2024 in MAT 1057 of 2024 by the Hon'ble Division Bench of the Hon'ble High Court at Calcutta, there the concerned department of the Government caused the delay in filing of the Appeal for their moving in slow paced manner, but in the present case the facts are not the same.

Ld. Advocate for the Respondent no-2 in reply argued that he is stressing the principle and spirit of the decisions and are not on facts.

Heard both sides at length.

Perused the application, affidavit-in-opposition, citations relied by the respective parties as well as materials on record.

Considered.

It is the well settled in law that in case of Section 5 of Limitation Act, the Court has to apply its discretionary power to condone the delay .

The grounds cited by the Appellant for the delay cause in the appeal is illness of the concerned dealing assistant of the Appellant at that relevant point of time but nothing has been stated to show that there was no other person to deal with the matter on behalf of the Appellant school. However, the Appellant has every right to appoint any specific person of his choice to represent itself.

It is also admitted position of the parties that the West Bengal Shops & Establishment Act, 1963 is a beneficial legislation formulated for the benefit of the society.

Perusal of the notarized photocopies of the medical documents filed by the Appellant prima facie does not appear to be fabricated.

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Regarding the submission that the Appellant has abandoned the proceedings before the Ld. Referee or admitted the claim of the Respondent no-2 before the Ld. Referee, these are all matters of the Appeal itself and if the Appeal is not admitted and L.C. R is not being called, the same cannot be adjudicated. So far the citations relied by the Ld. Advocate for the Respondent no-2 are concerned, those are not applicable in the present facts and circumstances of the case as the facts are otherwise.

In this regard, it is pertinent to mention the Judgment of the Hon'ble Apex Court reported in (1987) 2 Supreme Court Cases 107 titled as Collector, Land Acquisition Anantnag and another vs Ms Katiji and others, wherein the Hon'ble Apex Court has been pleased to observe in paragraph 03:-

“ The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. “Every day’s delay must be explained “ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. In fact he runs a serious risk.*

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5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice or technical grounds but because it is capable of removing injustice and is expected to do so. “

Normally, a party who approaches a Court of law with a grievance should not be deprived of hearing on merits , unless there is something to show that there was total inaction on his part.

Therefore, considering all such factual aspect and in order to give scope to both the parties to argue and put their respective cases on merit, and for the interest of fair adjudication of the matter on merit and larger interest of justice, this Court finds that the application u/s-5 of Limitation Act filed by the Appellant may be allowed.

Accordingly,

it is

Ordered

that the application u/s-5 of Limitation Act filed by the Appellant dated 10-02-2024 is hereby allowed on contest.

The instant Appeal is hereby admitted.

Call for the L.C. R.

Office to do the needful.

To (**17/06/2025**) for awaiting of the L.C. R and hearing of the Appeal.

The stay petition dated 10-02-2024 filed by the Appellant shall be heard together with the hearing of the appeal.

Dictated & corrected

by me :-

Chief Judge.

J.O .Code:- WB 01244.