

Title Appeal No. 05 of 2023
CIS Registration No.05 of 2023
(CNR No. WBSP07-000311-2023)

Order No. 192 dated 30.08.2025

Appellant files hazira through his Ld Advocate. The respondent No.1 and respondents No.3 to 18 and 20 to 23 are also present by filing separate haziras through their Ld Advocate.

Today is fixed for hearing of the petition U/s 5 of Limitation Act.

On scrutiny I find that the petition U/s 5 of Limitation Act was not pressed by Ld Advocate for the appellant on 13.02.2025 and as such the question of hearing that application does not arise.

In fact today is supposed to fix for hearing of petition U/s 151 of Code of Civil Procedure dt.17.06.2025 praying recalling the order dt.13.02.2025 and to permit the appellant to place the hearing of the application U/s 5 of Limitation Act dt.25.01.2023.

Ld Advocate for the appellant and Ld Advocate for the respondent No.2 are present. None appears on behalf of respondents No. 3 to 18 and 20 to 23.

It is now 1:00 pm. I therefore take up the application U/s 151 CPC dt.17.06.2025 filed by the appellant for hearing and decision.

It is alleged by the appellant that the original suit was dismissed on contest against the respondents No.2 to 23 and ex-parte against the respondent No.1. There was delay in filing the memo of appeal and as such the application U/s 5 of Limitation Act was filed by the appellant. Ld Advocate for the appellant was misguided and for some reason or other he 'Not pressed' the application U/s 5 of Limitation Act dt.25.01.2023 on 13.02.2025 when that application was taken up for hearing. Now, the appellant has prayed for restoration of that application for the ends of justice.

Ld Advocate for the respondent No.2 opposes the petition without filing written objection. It is submitted that this application cannot be allowed and the appellant has to come with a fresh application U/s 5 of Limitation Act.

I have considered the petition and the submissions made by the Ld Advocate for the appellant and Ld Advocate appearing on behalf of respondent No.2. I find that the appeal was not filed within the time stipulated and the petition for condonation of delay in preferring the appeal was filed. In my opinion, due to the fault on the part of the Ld Advocate for the appellant, the appellant should not suffer any loss. The appellant has every right to place his petition U/s 5 of Limitation Act before this Court. This right of the appellant cannot be curtailed.

In view of above, I felt that it would be just and proper to allow the application U/s 151 CPC dt.17.06.2025 for the ends of justice.

It is accordingly,

ORDERED

that the U/s 151 CPC dt.17.06.2025 filed by the appellant is allowed on contest.

The petition U/s 5 of Limitation Act dt.25.01.2023 is restored to its original file and number.

It appears on scrutiny that vide order No.14 dt.09.12.2024, this Court was satisfied perusing the track report with postal receipt that the item was delivered to defendant No.1.

I have carefully examined the track report with postal receipt of respondent No.1. I have examined the return of summons issued through Court. I am not satisfied about the service against respondent No.1. Apart from that I also find that summons was delivered to respondent No.19.

Accordingly, the appellant is directed to take fresh steps against the respondent No.1 & respondent No.19.

To 06.11.2025 for S/R, A/D and appearance.

D/C by me,

Addl. District Judge,
2nd Court, Sealdah.

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2nd Court, Sealdah.
(JO Code No. WB00656)