

22.07.2026
Court No.2
Item No.62
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

CO 1826 of 2024

**Shyamal Saha
Vs.
Indian Bank & Ors.**

Mr. S. Banerjee
Mr. S. N. Arafin
Mr. R. Singh

...for the petitioner

Mr. Shashwat Nayak
Ms. Antalina Guha
Ms. Shinjita Ray

...for the opposite party no.1

1. Present petition has been filed challenging the order dated 5th August, 2023 and 3rd April, 2024 passed by the learned Additional District & Sessions Judge, 1st Court, Sealdah, South 24 Parganas. Vide order dated 5th August, 2023, whereby learned Additional District & Sessions Judge, 1st Court, Sealdah, allowed the application under Section 5 of the Limitation Act filed by the defendant / respondent / appellant without even issuing the notice to the plaintiff / petitioner. The petitioner herein moved an application for recall of this order which was also dismissed by the learned Trial Court vide order dated 3rd April, 2024.
2. Learned counsel for the petitioner has submitted that the order dated 5th August, 2023 suffers from

patent illegality as firstly, the application under Section 5 of the Limitation Act was allowed without even issuing the notice and secondly, though the learned Trial Judge recorded that the reasons for delay are not sufficient yet condoned the delay taking into account the fact that the appeal was filed by the nationalized bank.

3. Learned counsel for the defendant / respondent has opposed the petition. Learned counsel submits that the order dated 5th August, 2023 has been reaffirmed by the learned Appellate Court vide order dated 3rd April, 2024 and, therefore, the present petition is liable to be dismissed as the remedy providing is by filing an appeal.
4. The Court has considered the submissions. The Court is shocked to see the impugned order dated 5th August, 2023, whereby the learned Additional District & Sessions Judge not only condoned the delay without even issuing the notice to the plaintiff / petitioner but also condoned the delay noting that there were no sufficient cause. The Apex Court has time and again reiterated that no institution can be given an upper hand in the matter of condonation of delay. Everybody is equal before the law and the litigant has to explain the delay day by day and show the sufficient reasons for condonation of delay. It is surprising that the learned Additional District &

Sessions Judge did not take into account the basic law that before condonation of delay, notice has to be issued to the opposite party. The order dated 5th August, 2023 cannot sustain in the eyes of law, as the same is set aside. Consequently, the order dated 3rd April, 2024 is also set aside.

5. The matter is remanded back to the learned Appellate Court for consideration of application under Section 5 of the Limitation Act for decision in accordance with law after giving the parties the opportunity of being heard.
6. Hence, the present revision petition stands disposed of.
7. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)