

09.02.2026
A.Bhar
SL. No. 1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELALTE SIDE

SAT 209 OF 2024
With
IA No.: CAN/1/2024, CAN/2/2025
CAN/3/2025

Pundari Midya And Ors.
-Versus-
Smt. Anjana Alias Hemangini Alias Hem Ari
And Ors.

Mr. Pinaki Ranjan Mitra,
Mr. Binoy Kumar Das,

...for the appellants.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,

....for the Opposite Party No. 1.

This is an application under Section-5 of The Limitation Act 1963 filed by the Appellant who was a defendant in a suit for declaration of Title and Joint Possession and have preferred a second Appeal being aggrieved by the Judgment and Decree dated 26th June 2019 passed in Title Appeal No. 20 of 2009 by Learned Additional District Judge Third Court Tamluk Purba Medinipur reversing the Judgment and Decree dated 8th March 2004 passed in Title Suit No. 35 of 2000 by the Learned Civil Judge (Junior Division) Additional Court Contai.

The contentions of the appellant in application under Section 5 of the Limitation Act 1963 may be summed up thus:

1. The respondent/opposite party no-1 herein instituted Title Suit 35 of 2000 before the Learned Civil Judge (Junior Division) Additional Court Contai for declaration of her Title in respect of Fa/1 schedule property of the plaint along with other co-sharers and injunction by contending inter alia that property in suit belonged to Prafulla Midhya and she is the only daughter of Prafulla Midhya and on his death has inherited the property in suit and the defendant no. 1 who is the wife of Late Mahadeb Patra she was engaged by her father in the middle of 1989 as maid servant for looking after the father of the plaintiff and her mother who have been suffering from various ailments and the plaintiff who used to live with her husband was a Railway employee and the defendant no-1 in collusion with defendant no. 2 to 4 threatened the plaintiff to cause financial harassment to the plaintiff. On 29-04-1993 and later the plaintiff on enquiry came to know that the defendant no. 1 in collusion with other defendants have enlisted name of defendant no-1 in some of the voters list and some of the documents as wife of her father and the

enlistment of name in the voter list and other papers which are an act of fraud and the same is not binding on the plaintiff.

2. The appellants and defendant no-1 contested the suit filed by the plaintiff/opposite party no-1 and the said suit was dismissed by judgment and decree dated 8th March 2004 by the Learned Civil Judge (Junior Division) Additional Court Contai.

3. An appeal was preferred by plaintiff/opposite party no-1 against the Judgment and Decree of the Trial Court and the said appeal was allowed by reversing the decree passed by the Learned Trial Court in the suit.

4. The appellant no-1 who was looking after the case had been suffering from ailments also could not contact with the engaged Learned Advocate, and got the information of the order allowing appeal on September 2019 by paying visit in the sherista of Learned Advocate.

5. The Appellant no-1 on getting information as to the order allowing appeal by Learned Court of Appeal requested the Learned Advocate to provide him copy of the Judgment and Decree as well as papers handed over to her for conducting the case and the appellant no-1 was advised to meet the Learned Advocate on 20th

September 2019, to take the brief and hand over expenses for obtaining certified copy of the order.

6. The Appellant no-1 though handed over expenses for obtaining certified copy on 20th September 2019 but was not provided with the brief as the same was not traceable.

7. That the appellant no-1 though met with the Learned Advocate at a regular interval in the month of November 2019 but neither the copy nor the brief relating to the case was handed over to the Appellant.

8. The appellant no-1 having failed to obtain the copy decided to engage another Advocate/clerk for the said purpose but due to his cardiac problem he could not move out till September 2021 and during the said period Advocates and clerks could not be contacted.

9. That after recovery from ailments the appellant contacted his Advocate but could not obtain copy of the Order as the file was not traceable. When the file was traceable the certified copy of the Judgment and Decree was applied for on 13/10/2023 and the same was obtained on 16/10/2023.

10. On obtaining the copy the appellant no-1 rushed to this Hon'ble Court met with the Learned Advocate Mr. Benay Kumar Das

and instructed him to prefer appeal against the Judgment and Decree passed by the first appellate Court.

11. The Learned Advocate after perusing the judgment and available papers from the petitioners instructed the petitioners to provide him copy of Judgment and Decree passed in the suit as well as other papers and exhibits for preparing the appeal.

12. Since the Court was closed in view of long vacation the appellant/petitioner could not contact with his Advocate and on November 2023 the appellant again met with his Learned Advocate Mr. Sakti Pada Bera and instructed him to apply for certified copy of the Judgment and Decree passed in suit as well as exhibited documents and order sheets. The appellant no-1 again met with Mr. Sakti Pada Bera to obtain the copies but the copies could not be obtained as the case records were sent to the Contai Court in the middle of month of May 2024.

13. The Petitioner/appellant thereafter with the help of Law clerk namely Sanjib Das applied for copy of the Judgment and Decree passed in the suit and entire order sheet and exhibited documents and copy of the depositions

of witnesses on 06/06/2024 and the Law Clerk obtained the same on 14th August 2024.

14. The Appellant/petitioner came with all papers and copies on 19th August 2024, and handed the same to Learned Advocate Mr Benay Kumar Das and Learned Advocate after perusing the records prepared the Memorandum of Appeal and application for condonation of delay and the same was ready in the office of the Learned Advocate on 26th day of August 2024 but the appellant no-1 could not come for affirmation of the application in view of his illness and was advised rest by the physician.

15. There is no intentional delay in filing the appeal belatedly and since the petitioners who are illiterate was not informed in due time as to the decree passed by the appellate court and after coming to know the decree has been passed in favour of the opposite party no 1 herein the petitioner took steps for filing the appeal but in view of ailments of appellant no. 1 and for the circumstances setforth the petitioner could not prefer appeal in time.

16. Unless the delay is condoned petitioner will suffer irreparable loss and injury.

The opposite party No. 1/plaintiff filed affidavit in opposition to the petition denying the

contentions made therein. The opposite party No. 1 has denied the all contentions made in paragraph 4,5,6,7,8,9,10 of the petitions. The opposite party has contended that only on 13th October, 2023 the certified copy of the judgment and decree was applied for and the story with regard to file not being traced out is not at all a factor even for applying the certified copy of the judgment and decree. Original file need not be looked into and as such from the averments made by the appellant himself proves that they were not being able to explain any circumstances prior to 13th October 2023 for which even a certified copy of the said judgment and decree not even applied for and particularly when the judgment was passed way back on 16th June, 2019.

The Opposite party No. 1 further denied the allegations made in Paragraph no. 11,12,13,14, 15 and 16 of the petition. It is contended that certified copy has been applied in the year 2023 and 2024, which does not require the original file to be traced out. The Opposite party No. 1 has also denied contentions made in paragraph 17,18 and 19 of the petition. The opposite party has submitted that the application for condonation of delay be dismissed.

Heard, Learned Advocate, for the appellants and Learned Advocate for the opposite party No. 1 plaintiff. Perused the petition filed and materials on record.

Learned Advocate, for the appellants/petitioners submits that due to ailment of appellant No. 1 and due laches of the Learned Advocate appearing in the District Court to supply the certified copy and relevant documents the appeal could not be preferred within period of limitation.

Learned Advocate for the Opposite party No. 1 submits that the petitioner could not explain the delay of 5 years of preferring the appeal thus delay should not be condoned. Learned Advocate further refers to the copy of the revisional application being CO 2459 of 2022 annexed to the affidavit in opposition and submits that the appellant No. 1 preferred a revisional application in the year 2022 thus the appeal could have been preferred in time. Learned Advocate, also submits that the petitioner/ appellant No. 1 has shifted his own laches upon the Learned Advocate of the District Court and his application is liable to be dismissed.

Before proceeding to decide on the issue of delay of 5 years it will appear that the

petitioner/appellant has sought to explain the delay on three grounds, firstly due to his own illness, thirdly due to non supply of certified copy of the order and relevant documents due to non tracing of file by the Learned Advocate of the District Court and preparation of Appeal by the present Advocate. Now so far the contention of meeting the present Advocate of this case on October 2023, till preparation of the appeal the time taken to prepare the appeal and for the said purpose collection of relevant documents from Trial Court, as the present appeal is prepared at the office of the said Learned Advocate and the petition drafted by him the contentions should not be disbelieved. As an Advocate is an officer of the court and is preparing a petition with responsibility, the grounds in petition which involves his advice and time taken to prepare the said appeal which is within his knowledge and reflected in the petition should not be disbelieved. Thus the period of delay from October 2023 till 14th August 2024, when the appeal was filed should be accepted. Now with regard to period from March 2020 till February 2022, as it was the Covid period and there was restriction and the functioning of the Courts were not normal such delay should also be condoned. With regard to the

contention that the certified copy was not handed over as the file was not traced out by the Learned Advocate it is submitted by the opposite party no-1 that original file is not required to apply for certified copy. In this regard it is to be remembered that a litigant does not gain any benefit in preferring the Appeal after period of limitation, thus unless the conduct of the applicant is shown to be *mala fide* with intent to harass the opposite party ordinarily the delay should be condoned. In the instant case the act of the appellant no-1 in coming to the office of the Learned Advocate of this court to prefer the Appeal only with certified copy of the Decree of Appellate Court, without Judgement of Trial Court and other documents and going once again to the Trial Court to collect the documents goes to show that the appellant no-1 was not properly advised by District Court Advocate as to the documents required. Hence the contention that the appellant no-1/petitioner did not receive certified copy from District Court Advocate due to no-availability of file should not be disbelieved. Although the appellant no-1/petitioner did not submit medical documents with regard to illness from August 2019 till February 2020, but the specific illness

mentioned in the petition gives ground to believe the existence of illness.

In the case of Pyre Lal Vs Kamala Devi and Anr reported in AIR-2011 H.P P-45 the Hon'ble Court observed as follows:

6. *"The court is of the considered view that the provisions of Section 5 of the Limitation Act must be construed liberally. The appellant has shown sufficient cause. The hypertechnical approach in this case is to be avoided and that the conduct of the party is also required to be seen. There can be no straitjacket formula to come to the conclusion if sufficient and good grounds have been made out or not. Their Lordships of Hon'ble Supreme Court in Improvement Trust, Ludhiana v. Ujagar Singh and others, (2010) 6 SCC 786 have held that it is the duty of the Court to see it that justice should be done between the parties. Their Lordships have further held that unless mala fides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities. Their Lordships of the Hon'ble Supreme Court have held as under (Paras 16, 19 to 22) :-*

“While considering the application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behaviour and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter.

In our opinion, the ends of justice would be met by setting aside the impugned orders and the matter is remitted to the executing Court to consider and dispose of the appellant’s objections filed under Order 21, Rule 90, CPC on merits and in accordance with law, at an early date. It is pertinent to point out that unless mala fides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it out on such technicalities.

Apart from the above, the appellant would not have gained in any manner whatsoever by not filing the appeal within the period of limitation. It is also worth noticing that delay was also not that huge, which could not have been

condoned, without putting the respondents to harm or prejudice. It is the duty of the Court to see to it that justice should be done between the parties.”

Upon considering the facts of the case and upon hearing the Learned Advocates, and upon considering different judicial decisions this court is of the view that delay in filing the Appeal should be condoned upon payment of costs.

Hence this application is allowed, subject to the payment of Costs of Rs. 10,000/-. The appellants/petitioners shall pay cost of Rs. 8,000/- to the plaintiff/opposite party no-1 and Rs. 2000/- to the State Legal Service Authority West Bengal.

Such payments shall be made on or before 20/02/2026.

Fix 23/02/2026 for Compliance Report regarding payment.

(Biswaroop Chowdhury, J.)