

05.03.2026

A.Bhar
SL. No. 2

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELALTE SIDE

SAT 244 OF 2025
With
IA No.: CAN/1/2025, CAN/2/2025

State of West Bengal & Ors.
-Versus-
Smt. Anita Nanda

Mr. Jayanta Samanta,
Mr. Bikash Goswami,

...for the appellants.

Mr. Ganesh Shrivastava,
Mr. Sukanta Das,
Mr. Snehasis Jana,

....for the respondent.

This is an application for condonation of delay filed by the appellants/petitioners praying for condonation of delay of 1069 days.

The case of the appellant in the application may be summed up thus:

1. The Respondent preferred Title Suit No-332 of 2008 against the appellants and the same was decreed on 02-09-2004 by Learned Civil Judge (Junior Division) 2nd Court Paschim Medinipur.
2. The Appellants being aggrieved by the Judgment and Decree passed by the Learned Trial Court preferred an Appeal before the First Appellate Court.

3. By Judgment dated 29-04-2022 Learned Additional District Judge 4th Court Paschim Medinipur was pleased to dismiss the appeal being TA-96/2014 preferred by the Appellant.
4. After passing of the Judgment the appellant no-3 applied for copy of the same within a month and thereafter obtained the same in the month of August 2022.
5. After obtaining certified copy of the order the Appellants tried to contact the Learned Government pleader but failed to do the same as he was suffering from acute illness and subsequently new person took charge of the said chair thus it took further time to form opinion.
6. In the month of September 2022 proposal was sent to the office of Learned Legal Remembrancer for appointment of State Advocate for filing of Appeal against order passed by the First Appellate Court but due to Annual/Puja Holidays in the aforesaid office the same was closed. On 24-01-2024. Mr. Somnath Ganguly was engaged.
7. At the time of holding conference with Mr. Somnath Ganguly he asked for the certified copies of the Judgment and decree of the trial Court and appeal Court.
8. After vociferous search the appellant no-3 realized that the same were lying with the erstwhile

Government pleader of Paschim Mednipur and inspite of best efforts could not be traced out.

9. The Appellant No-3 thereafter applied for the certified copy of the Judgment and Decree of both Learned Trial Court and Learned First Appellate Court on 26-06-2025 and obtained one on 07-08-2025 and another on 24-09-2025.
10. On receiving the certified copies the appellants contacted Mr. Ganguly and came to know that Mr. Ganguly has already resigned from state panel on 09-09-2025.
11. Thereafter the present Learned Advocate was engaged by the present appellants to prepare and file the appeal The appeal could not be filed due to Puja Vacation and was filed on 24-10-2025 on the reopening date after vacation.

The respondents filed Affidavit in opposition denying the contentions made in the application for condonation of delay. The respondents have denied the allegations made in Sub-paragraph C and D of paragraph 4 of the said application that after passing the aforesaid judgment in title appeal 96 of 2014, appellant no. 3 applied for copy of the same (being) judgments within a month as alleged or otherwise and obtained the same in the month of August 2025 as alleged. The respondent have further disputed and denied the

allegation that the appellants tried to contact with Learned Government Pleader but failed to do the same as he was suffering from illness and subsequently a new person took charge of the said chair and also it took further time to form opinion as alleged or otherwise. It is further contended that there is no specific particulars and date when the purported copies of judgment and decree were applied for and obtained and who was the Learned Government pleader and also no document produced for illness of the State Learned Government Pleader. The allegation are totally vague and concocted story made before this court. There is no mention as to when the certified copies were applied and made ready and when the appellants tried to contact the Learned Government Pleader and when the new appointee took charge and who met the new appointee and when and where.

With regard to sub-paragraphs (e) and (f) of paragraph 4 of the application the respondents have denied the allegation that in the month of September 2022 proposal was made to the office of the Learned Legal Rememberancer for appointment of State Advocate for filing appeal against Order dated 29/04/2022 of Learned 4th Additional District Judge Paschim Medinipur in

TA no. 96 of 2014. It is also contended that no document has been produced before this Court to substantiate such allegation. The allegations made in subparagraphs under reference are vague and lacks particulars. It is contended that after judgment passed in the appeal till the alleged appointment of Mr. Somnath Ganguly there is no explanation for such period of delay for about 16 months.

With regard to sub paragraphs G, H and I of the said paragraph 4 of the said application the respondents have denied and disputed the allegation that after holding of conference with Mr. Ganguly the appellant no. 3 realized that the certified copies of two judgments and decree were lying with the erstwhile Government Pleader of Paschim Medinipur and that inspite of all best joint efforts those could not be traced out as alleged or otherwise or at all. There is no explanation in the said application as to why the Appellant no. 3 applied for the certified copy of the said two judgments and decree after more than 18 months of the alleged conference with Mr. Ganguly.

The respondents have also contended that the sub paragraphs J, K, L and M and paragraph 4 are denied. It is further disputed that the

allegation that the appellants took steps for the engagement of new Advocate and did the needful on 10.10.2025 and consequently the present advocate had been appointed for the same and that the present Learned Advocate could not prefer the appeal due to ongoing Puja Vacation and has preferred on 24.10.2025 on the very day of reopening day of this Court after Puja Vacation as alleged or at all. The respondents submitted that the application for condonation of delay be dismissed.

The appellants filed affidavit in reply to the opposition submitted by the respondents rebutting the allegation and reiterating the contentions made in the application. In the Affidavit in reply it is further contended that after the judgment dated 29.4.2022 in Title Appeal no. 96 of 2014 steps were taken within reasonable time to obtain certified copies and thereafter to obtain legal opinion which was delayed due to illness of the then Learned Government Pleader and subsequent administrative procedure. It is further contended that proposal was forwarded to the office of the legal Remembrancer in September 2022 for appointment of a State Advocate and the time consumed thereafter was due to mandatory procedural formalities file movements and

engagements of Somnath Ganguly who has been subsequently designated senior on 24.1.2024. With regard to paragraphs 10 and 11 in the said affidavit the appellants further contended that the litigant should not suffer due to the laches of Learned Advocate and therefore considering the same the application under Section 5 of the Limitation Act must be considered in a sympathetic way where rejection will cause irreparable loss and injury.

Heard Learned Advocates for the appellant and Learned Advocate for the respondents. Perused the petition and materials on record. Learned Advocate for the appellant relies upon the following judicial decision Para No. 1 Sheo Raj Singh VS United India reported in 2023 10 SCC page 531. Learned Advocate for the respondent relies upon the following decisions:

Manoj Sing Vera VS Municipal Corporation of crossland Mumbai reported in 2025 5 SCC page 157. Shivamme VS Karnataka Housing member and others reported in 2025 INSC 1104.

Upon perusing the petition this Court with regard to the steps taken by the appellant finds that after passing of the judgment it is contended that the appellant no. 3 applied for certified copy within a month and obtained the same in the

month of August 2022 but no document is annexed that certified copy was obtained in the month of August 2022. Secondly it appears from record also, that although the appellants contended that the Legal Remembrancer State of West Bengal was moved for engaging an Advocate to prefer the second appeal in the month of September 2022 but nowhere there is document showing that the Legal Remembrancer was moved in the month of September 2022 for engaging an Advocate. The appellants annexed communicated copy of the letter dated 24.1.2024 issued by the office of the Legal Remembrancer West Bengal appointing Mr. Somnath Ganguly Learned AGP High Court Calcutta. But it is not clear as to what prevented the appellants to file the copy of the application made on September 2022 to the Legal Remembrancer for engaging Advocate. Further the plea that the office of the Legal Remembrancer was closed from September 2022 till September 2023 for which the Learned Legal Remembrancers appointed Advocate on 24.1.2024 cannot be sustained. Moreover from the document of the Legal Remembrancer itself where the copies are forwarded for information and necessary action to the Superintendent of Police Paschim Midnapur it is mentioned that it

has reference to office Memo no. 155 Legal Cell dated 13.1.2024. Thus from the Memo itself it is clear that the Legal Cell of the office of the Superintendent of Police Paschim Midnapur moved the Legal Remembrancer on 13.1.2024 and appointment of Advocate was made on 24.1.2024. The deponent has affirmed this affidavit without taking proper instruction in this matter. However, with regard to the Learned Advocate Mr. Somnath Ganguly instructing the appellants to obtain certified copy of both the judgment and decree of the Trial Court and Appellate Court and such application was made in the month of August 2025 this Court is of the view that there is certain indication that the Learned Advocate who was conducting the case on behalf of the appellants in District Court did not apply for the certified copies and did not inform the appellants to take necessary steps on the basis of the said copies after handing over the same. An advocate has a duty to obtain certified copy of the Judgement after it is delivered and handover the same to his client upon payment of necessary costs. But in the instant case from the records of the appeal it appears that the Learned Advocate did not take necessary steps for which the certified copies had to be applied for in the month of August 2025.

In the case of Sheo Raj Sing (supra) Hon'ble Supreme Court observed as follows:

'28. This Court in Tehsilder (LA) v. K.V. Ayisumma¹³, had the occasion to observe that it would not be necessary for the State to provide a day-to-day explanation of delay while seeking condonation of the same. The relevant observations therein read as follows: (SCC p. 635, para 2)

"2. It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day-to-day delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by

skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law and down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned."

In the case of Maniben Devraj Singh(Supra) the Hon'ble Supreme Court observed as follows:

'11.Shri A.S. Bhasme, Learned Counsel for the appellants argued that the reasons assigned by the Learned Single Judge for condoning more than 7 years and 3 months' delay in filing the appeals are legally unsustainable and the impugned order¹ is liable to be set aside because the explanation given by the Corporation lacked bona fides and was wholly unsatisfactory. The Learned Counsel emphasised that in the absence of any denial by the Corporation that it has a battery of advocates to deal with the litigation, the transfer of Shri Ranindra Y. Sirsikar in January 2004 to the miscellaneous court and, thereafter to other courts has no bearing on the issue of delay

because the suits filed by the appellants had been decided in May 2003 and no explanation has been given as to why applications for certified copies could not be filed for 7 years and 5 months.

12. Shri Bhasme submitted that even if one advocate/law officer was transferred from one department/division to another, nothing prevented the Corporation from taking steps to apply for certified copies of the judgment. Shri Bhasme further submitted that the story of misplacement of papers was concocted by the Corporation and the same ought to have been rejected by the High Court because the assertion made in that regard was vague to the core and no indication was given as to when the papers were traced and by whom. In support of his argument, Shri Bhasme relied upon the judgment of this Court in Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn.⁴

The Hon'ble Court further observed as follows:

'28. The application filed for condonation of delay and the affidavits of Shri Sirsikar are conspicuously silent on the following important points:

(a) The name of the person who was having custody of the record has not been disclosed.

(b) The date, month and year when the papers required for filing the first appeals are said to have been misplaced have not been disclosed.

(c) The date on which the papers were traced out or recovered and name of the person who found the same have not been disclosed.

(d) No explanation whatsoever has been given as to why the applications for certified copies of the judgments of the trial court were not filed till 23-8-2010 despite the fact that Shri Sirsikar had given intimation on 12-5-2003 about the judgments of the trial court.

(e) Even though the Corporation has engaged a battery of lawyers to conduct cases on its behalf, nothing has been said as to how the transfer of Shri Ranindra Y. Sirsikar operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against.

29. Unfortunately, the Learned Single Judge of the High Court altogether ignored the gaping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file application for issue of certified copies of the judgment for more than 7 years. In our considered view, the cause shown by the Corporation for

delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the Learned Single Judge for condoning more than 7 years' delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act.'

Hon'ble Supreme Court in the case of Shivamma (supra) observed as follows:

'258. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, it cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered

by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

259. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the ‘Sword of Damocles’ hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

260. From the above exposition of law, it is abundantly clear that the High Court has erroneously condoned a massive delay of 3966 days on account of certain lapses at the administrative levels and of there being no follow-ups in the proceedings, along with finding certain merits in the case of the respondent no. 1 against the maintainability of the suit of the appellant and that of the relief molded by the First Appellate Court. We have no hesitation in stating that such grounds are nowhere near to being “sufficient cause” as per Section 5 of the 1963 Act. The High Court lost sight of the fact that the precedents and

authorities it relied upon by it had delays of two-digits, or even that of single-digit, more particularly the delay in those cases was supported by sufficient cause. The present case, however, stands on a very different footing, owing to such an enormous delay. Hence, we are not inclined to accept the condonation of the delay by the High Court.'

Upon hearing the Learned Advocates and considering the facts of the case and judicial decisions, this Court is of the view that although the State Authority cannot be granted a separate status, with regard to the condonation of delay but the grounds for condonation if inspires confidence in the mind of the Courts and appears reasonable to some extent the Courts may in the exercises of its discretion condone the delay. The judgments relied upon by the respondents do not apply to the facts of the case and the period involved in the said cases were much long. While condoning the delay the Courts have to take into consideration the period of delay and the grounds furnished. It is true that the appellants are not able to furnish the grounds for delay from September 2022 till January 2024 but considering the fact with regard to said period it is also to be remembered that officers of the Police Department

do not continue for long periods in any particular station as there is transfer thus delay is caused due to this reason also. Considering the fact that certain steps were taken by the appellants and the latches of previous Advocate the appellant's conduct does not show mala fide intention on their part. Thus in the interest of justice the delay should be condoned upon payment of costs. Hence this application CAN 1 of 2025 stands allowed subject to the payment of costs by the appellants to the respondents of Rs. 50,000/- (Rupees fifty thousand). Such payment shall be made within 2 weeks. Fix 23.3.2026 for compliance report regarding payment of costs.

(Biswaroop Chowdhury, J.)