

IN THE HIGH COURT AT CALCUTTA
(Civil Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

SAT 64 of 2024

With

IA No: CAN 1 of 2024

CAN 2 of 2024

Haroj Ali Sardar

Vs.

Sri Panna Lal Chandra & Ors.

For the Appellant

:Mr. Tanmay Mukherjee, Adv.

Mr. Asif Sohail Tarafdar, Adv.

For the Respondents

:Mr. Somnath Roy Chowdhury, Adv.

Ms. Arpita Choudhury, Adv.

Ms. Soumita Shaw, Adv.

Last Heard on

:07.08.2025

Judgment on

:11.09.2025

Bibhas Ranjan De, J.

In Re: CAN 1 of 2024

1. The instant application under Section 5 of the Limitation Act has been submitted before this Court with a prayer for condonation of substantial delay of 2931 days in filing of the second appeal, primarily attributable to the pendency of the proceeding under Order 47 Rule 1 of the Code of Civil Procedure (for short CPC) and illness suffered by the petitioner, which circumstances have collectively impeded the timely prosecution of the present matter.

Background in Brief:-

2. One title suit being no. 48 of 2006 was instituted by the respondents/opposite party with a prayer for a decree for eviction and revocation of license against the appellant/petitioner. Ld. Trial Court dismissed the said title suit by the judgment and decree dated 30.04.2013 which was assailed in Title Appeal no. 134 of 2013 wherein Ld. Appellate Court reversed the judgment of the Trial Court, thereby directing appellant/ petitioner to vacate the suit property within two months.

3. Being aggrieved by and dissatisfied with the judgement and decree dated 29.07.2016 passed by the Ld. Appellate Court, appellant/petitioner took out an application for review under Order 47 Rule 1 of the CPC which was registered as Misc. Case No. 90 of 2016. Said Misc. Case was dismissed for default on 26.07.2022. At the behest of appellant/petitioner one application was made for restoration of the said Misc. Case No. 90 of 2016 to its original file and number. Said restoration application was registered as Misc. Case No. 254 of 2022 which is still pending for adjudication.

4. The Second appeal being no. SAT 64 of 2024 has been preferred on 09.04.2024 against the judgment and decree dated 29.07.2016 passed by the Ld. First Appellate Court, along with the instant application (CAN 1 of 2024) for condonation of delay of 2931 days in preferring the second appeal.

At the Bar:-

5. Ld. Counsel, Mr. Tanmay Mukherjee, appearing on behalf of the petitioner/appellant has submitted that being aggrieved by the judgment and decree dated 29.07.2016 the petitioner filed one application for review under Order 47 Rule 1 of CPC

due to apparent error, under advice of Ld. Counsel but he was diligently pursuing the matter.

- 6.** Mr. Mukherjee has further submitted that petitioner being a senior citizen suffered from severe heart disease together with heart operation on 31.07.2020. It is submitted that upon knowledge of the order dated 04.03.2024 passed in Title Execution Case no. 61 of 2023 the instant appeal has been filed. Mr. Mukherjee has further submitted that the petitioner being a layman and senior citizen fully relied on the advice of the Ld. Counsel.
- 7.** Mr. Mukherjee has further submitted that two applications registered as CAN 3 of 2024 and CAN 4 of 2024 were filed under Section 146 of the CPC with an application for condonation of delay under Section 5 of the Limitation Act. This Court after considering all facts and circumstances condoned the delay in filing application under Section 146 of the CPC.
- 8.** In opposition to that, Ld. Counsel, Mr. Somnath Roy Chowdhury appearing on behalf of the opposite parties/ Respondents submitted that in the application for condonation of delay in filing second appeal there is nothing

specific regarding indisposing and death of Ld. Counsel representing the petitioner/ appellant in the review application. Mr. Roy Choudhury has specifically highlighted the documents annexed with the application in support of heart disease of the petitioner by submitting inter alia that petitioner suffered from heart problem from April 2020 to August 2020 i.e. for 5/6 months only out of total delay of more than 8 years.

9. Mr. Roy Choudhury has submitted that no tenable explanation was given by the petitioner/appellant for inordinate delay of 8 years. Mr. Roy Choudhury has further submitted that negligence of the Ld. Counsel cannot be a ground to condone an inordinate delay, ignoring the responsibility of the litigant who owes a duty to be vigilant of his own rights and the judicial proceeding pending in the Court at his instance.

10. In support of his argument, Mr. Roy Chowdhury took assistance from the following judgment laws:-

- ***Consolidated Engg. Enterprises vs. Principle Secretary, Irrigation Department and others, (2008) 7 SCC 169***

- ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 SCC 649***
- ***Amalendu Kumar Bera vs. The State of West Bengal, (2013) 4 SCC 52***
- ***Rajneesh Kumar and another vs. Ved Prakash, 2025 (3) Supreme 15***
- ***Union of India and another vs. Jahangir Byramji Jeejeebhoy, (2024) SCC OnLine SC 489***
- ***Ajit Singh Thakur vs. State of Gujrat, (1981) 1 SCC 495***
- ***Ramlal vs. Rewa Coalfields Limited, AIR 1962 SC 361***

Analysis:-

11. Ld. Counsel representing the petitioner has predominantly endeavoured to impress upon this Court that the duration consumed in proceeding instituted under Order 47 Rule 1 of the CPC ought to be excluded from the computation of the prescribed period of limitation falling within the purview and contemplation of the salutary provision enshrined in Section 14 of the Limitation Act.

12. Having heard the rival submissions adduced on behalf of the parties as well as after going through the cases relied on, I feel it would be pertinent to first discuss about the pendency of the restoration application of the actual review application under Order 47 Rule 1 of CPC filed at the behest of the appellant, which was dismissed for default, as a possible ground for the delay caused. Ld. Counsel, Mr. Mukherjee has contended that the petitioner, who is also a senior citizen, was advised by his Ld. Counsel that the appropriate course of action was to file a review due to an apparent error in the impugned order. Therefore, as he invested a significant time being a layman and a senior citizen as per advice of his Ld. Counsel, the delay caused was actually beyond his control. However, I am not at all agreeable with this string of argument harped at the behest of Mr. Mukherjee. In this regard, it would be pertinent to reproduce **Order 47 Rule 1 of the CPC** which deals with application for review of judgment which runs as follows:-

*“1. **Application for review of judgment.**-(1) Any person considering himself aggrieved-*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and or the case on which he applies for the review.”

13. With regard to argument for exclusion of period of limitation under Section 14 of the Limitation Act, it would be most appropriate and conducive to reproduce, for ready reference, the germane provision embodied in Section 14 of the Limitation Act, which is set forth as follows:-

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against

the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.”

14. Section 14 of the Limitation Act only deals with exclusion of time of proceeding bona fide in a Court without jurisdiction and the instant review application did not suffer from defect of jurisdiction or other causes in like nature. Therefore, the period of pendency of the review application and its subsequent restoration application cannot be excluded from computation of total period of delay.

15. In this regard, it would also be pertinent to mention that the review application was dismissed for default. Therefore, it cannot be said with authority that the appellant exercised due diligence and good faith in conducting the review application. Therefore, I find no justified cause to take aid of Section 14 of the Limitation Act upon considering the factual matrix of this case. Even during pendency of the restoration application, it apparently took the appellant almost two years to prefer the second appeal which is also beyond any justified explanation.

16. The appellant alternatively has submitted that two applications being CAN 3 and CAN 4 of 2024 under Section 146 of the CPC along with an application for condonation of delay under Section 5 of the Limitation Act were filed by the appellant wherein this Hon'ble Court after hearing condoned the delay of 150 days. But that, in my humble opinion does not have any relevance in adjudicating the present application for condonation of inordinate delay of 2931 days in filing the present appeal being SAT 64 of 2024.

17. Now coming to the next point with regard to the heart ailment of the petitioner as a plausible reason for delay, the

available materials on record would clearly suggest that the petitioner suffered from heart problems only between April 2020 to August 2020. Therefore, it cannot be said to be a justified and conclusive ground for condoning the delay as throughout the application also, the petitioner/ appellant has failed to furnish any cogent reason to justify the enormous inordinate delay of almost 8 years.

18. In this regard, I would like to further add that the petitioner himself stated in the application under Section 5 specifically in paragraph 13 that the only reason for preferring this Second Appeal is to obtain stay of the impugned judgment and decree dated 29.07.2016 passed by the First Appellate Court. Paragraph 13 clearly states *inter alia* that :-

“ 13. Your petitioner being a layman was of the opinion that your petitioner has done his due diligence in the said matter, it was only after the knowledge of the Order dated 04.03.2024 passed Title Execution Case No. 61 of 2023 your petitioner had the knowledge that an order of stay of the Judgment and decree dated 29th July 2016, passed by Sri. Depankar Pal being the Additional District Judge 2nd Court at Howrah in Title Appeal No. 134 of 2013 is required.”

19. Conglomeration of the aforesaid discussion clearly suggests that the instant application for condonation of delay has no legs to stand in view of the principle laid down by the Hon'ble Apex Court in the case of ***Esha Bhattacharjee*** (supra) especially in paragraph 21 which runs as follows:-

“ 21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (1) There should be non-pedantic approach while dealing with an application for condonation of a liberal, pragmatic, justice-oriented, delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis. 21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so

that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

- 20.** It is well settled that neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost 8 years on the grounds mentioned in the application herein. Ignorance of law is no excuse as rules of limitation are not meant to destroy the rights of the parties but they are only meant to see that parties do not resort to dilatory tactics and seek remedy promptly.
- 21.** Ex consequenti, the application for condonation of delay in filing Second Appeal being no. SAT 64 of 2024 stands dismissed.
- 22.** Connected applications, if there be, any stand disposed of accordingly.
- 23.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 24.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]