

03.12.2025
Sl. No. M/L 48
Ct No. 6
SG

CO 1481 of 2025

**Gangotri Biswas
Vs
Rajib Sadhukhan**

Mr. Tapas Kr. Manna,
Ms. Anindita Majumder.

...for the petitioner

Mr. Debjit Mukherjee,
Mr. Kaustav Bhattacharya,
Ms. P. Jana,
Mr. U. Das.

...for the opposite party

1. The order impugned dated January 24, 2025 was passed by the learned Additional District Judge, 3rd Court at Barrackpore and a delay of 930 days in filing the application under Order 9 Rule 13 Code of Civil Procedure was condoned.

2. The only reason given by the Court was that the opposite party should not be blamed for the negligence of the advocate. The court recorded that the opposite party had also suffered from illness. However, this Court does not find that the reasons behind such conclusions were at all discussed or taken note of. The Hon'ble Apex Court in ***Nitin Mahadeo Jawale & Ors. vs Bhaskar Mahadeo Mutke*** reported in **2025 SAR (Civ) 49** has held that inaction of the advocate cannot be a ground for condoning the delay.

3. The Court has not discussed either the medical report or the history of illness of the opposite party which prevented him from approaching the Court within the period of limitation.

4. The suit was fixed for ex-parte order. At that juncture, the opposite party filed the written statement and an application to remove the suit from the ex-parte board. Such prayer was allowed and the written statement was accepted. The order was challenged before this Court in CO 1719 of 2019. A co-ordinate Bench found that no plausible explanation has been afforded by the husband as to why there was such extraordinary delay in filing the application for taking off the suit from the ex-parte board and for acceptance of the written statement. The order passed by the trial Court was set aside and the co-ordinate Bench of this Court directed that the suit should be disposed of ex-parte, without allowing any opportunity to the opposite party/husband. Such order was not challenged by the husband. However, the co-ordinate Bench gave liberty to the husband to take steps under Order IX Rule 13 of the Code of Civil Procedure, against such ex-parte decree and in accordance with law. Such order was passed on contest and the opposite party-husband was represented before this Court. Even then, the application under Order IX Rule 13 was not filed within stipulated period of

limitation but was filed 930 days later. The application under Section 5 of the Limitation Act mentions how the opposite party had to change his learned advocate, attend his ailing mother and take care of his health. He went to different advocates to take advice. The period when the opposite party suffered from Covid has not been mentioned. Also it is urged that on account of illness, the opposite party could not approach the Court. The explanations given by the opposite party are haphazard. They do not link up to the number of days of delay. The parties have been apart for almost 10 years. Although, the co-ordinate Bench granted liberty to the opposite-party to challenge the ex-parte decree, the opposite party waited for 930 days. The conduct of the opposite party *prima facie* seems to be extremely careless and negligent.

5. Accordingly, the impugned order is set aside and the matter is remanded for a fresh hearing on the issue of condonation of delay. Whether the opposite party could show sufficient cause as to why the application for setting side the ex-parte decree could not be filed on time, must be decided again.

6. Various aspects were to be looked into by the trial Court, to hold that a case for condonation of delay had been made out, and the opposite party/husband, was vigilant in pursuing his remedy under the law.

7. The application should be heard and disposed of by the Court independently, within a period of two months from date.

8. Accordingly, CO 1481 of 2025 stands disposed of.

9. The observations made herein are tentative and restricted to the disposal of the application.

(Shampa Sarkar, J.)