

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

Present:

The Hon'ble Justice Sugato Majumdar

SA 296 of 2012

**Arup Kumar Bhunia & Ors.
Vs.
Nandalal Bhunia & Ors.**

For the Appellants : Rabindranath Mahato, Adv.

For the Respondents : Arnab Mukherjee, Adv.
Shreyasi Manna, Adv.

Heard on : 16.12.2025

Judgment on : 18.12.2025

Sugato Majumdar, J :

The instant second appeal is preferred against the Judgment passed by the First Appellate Court dated 30th April, 2012.

The original suit was filed for partition by metes and bounds. Preliminary decree was passed in part on contest against the Defendant Nos. 1 to 10, and ex parte against the Defendant Nos.11 to 32 in terms of the Judgment of the Trial Court dated 18th February, 2010.

Appeal was preferred by the Defendant No. 1 against the said Judgment of the Trial Court dated 18th February, 2010. The appeal was delayed for which an application under Section 5 for condonation of delay was made. The First Appellate Court declined to condone the delay and dismissed the appeal.

The First Appellate Court took evidence and considered the same. There was a delay of 10 months. The First Appellate Court considered that the Appellant was under prolonged treatment from 2009 to 2010 but observed that there were no medical papers in this regard. It was the conclusion of the Appellate Court that sufficient cause pleaded was not acceptable as just and trustworthy. Plea of ignorance of proceeding was taken. But appreciating evidence, the First Appellate Court concluded that this plea was not acceptable. The Appellant had grown up son who could have taken care of the litigation. In conspectus of facts, the Appellate Court dismissed the application filed under Section 5 of the Limitation Act, 1963 against which this the Second Appeal was preferred.

The substantial question of law framed was “Whether the learned judge in the lower appellate court committed substantial error of law by applying the wrong legal test in considering the application for condonation of delay in filing the appeal?”

The First Appellate Court took evidence considered the same, as stated above. There was delay of about 10 months. The Learned Counsel for the Appellant submitted that only 10 months delay should be condoned but the Appellate Court unjustifiably became pedantic and strict.

The Learned Counsel for the Respondent submitted that in **D. Gopinathan Pillai Vs. State of Kerala & Anr. [(2007) 2 SCC 322]**. The Supreme Court of India observed that delay cannot be condoned merely on sympathetic ground when mandatory provision had not been complied with without proper reason, delay cannot be condoned.

I have heard rival submissions.

The question of condonation of delay was considered by the Supreme Court of India at length in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. [(2013) 12 SCC 649]**, the Supreme Court of India approves certain principles, applicable to an application for condonation of delay. It was observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalize injustice but are obliged to remove injustice. 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. Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact. The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. The Supreme Court of India considered the distinction between inordinate delay and a delay of short duration or few days to the former, the 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 one calls for a liberal delineation.

The First Appellate Court considered certain aspects of the matter and was delighted in presuming that there was a grown up son of the Appellant who should look after the litigation. Absence documentary evidence of medical documents also swayed the First Appellate Court. The approach of the First Appellate Court was too much pedantic and narrow. The approach was too much technical too. This is a suit for partition. The delay was of 10 months which, in view of long pendency of the suit cannot be said to be inordinate.

For discussions stated above, this Court is of view that the First Appellate Court erred in law as well as in fact in refusing to condone delay.

The order of the First Appellate Court dated 30th April, 2012 is hereby set aside.

The First Appellate Court shall reconsider the application filed under Section 5 as well as admission of appeal and shall pass necessary order within one month from the date of communication of this order.

The instant appeal is accordingly disposed of.

Lower Court Record be returned.

(Sugato Majumdar, J.)