

D/L- 20
11/09/2025
Ct. No.-6
Aritra

C.O. 3352 of 2025

**Srabanti Sinha @ Srabonti Singha
Vs.
Ashis Kumar Das**

Mr. Ayan Banerjee
Mr. Ajeyo Chowdhury

....for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.9 dated April 16, 2018 passed by the learned Chief Judge, City Civil Court at Calcutta in Miscellaneous Appeal No.45 of 2017.

By the order impugned, the learned judge of the Appellate Court rejected the application under Section 5 of the Limitation Act and consequently dismissed the miscellaneous appeal.

The learned advocate appearing for the petitioner submits that an application under Section 5 of the Limitation Act has to be construed liberally. It is well-settled that each days delay is not required to be explained. He further submits that due to circumstances beyond the control of the petitioner there was a delay in preferring the miscellaneous appeal.

The opposite party filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997 which was registered as Ejectment Suit No.312 of 2005. The petitioner was contesting the said suit but thereafter

failed to contest the same. Accordingly, the suit was decreed *ex parte* on November 24, 2010. The said decree was put into execution giving rise to Ejectment Execution Case No.35 of 2011.

The petitioner filed a miscellaneous case under Order 9 Rule 13 of the Code of Civil Procedure being Miscellaneous Case No.156 of 2015 praying for setting aside the *ex parte* decree passed in the eviction suit. Since the miscellaneous case was filed beyond the statutory period of limitation, the same was accompanied by an application under Section 5 of the Limitation Act.

The learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta by an order dated May 15, 2017 dismissed the application under Section 5 of the Limitation Act and consequently dismissed the miscellaneous case.

Challenging the said order the petitioner has preferred a Miscellaneous Appeal No.45 of 2017. The said miscellaneous appeal was also filed beyond the statutory period of limitation and the same was accompanied by an application under Section 5 of the Limitation Act. The learned Judge of the Appellate Court took note of the fact that the petitioner herein prayed for condonation of delay in filing the miscellaneous case on the ground that the petitioner could not arrange funds and for such reason there was a delay.

The learned Judge of the Appellate Court after considering the materials on record arrived at a factual

finding that the petitioner is in habit of making delay all through. The learned Judge of the Appellate Court further observed that the ground shown for the delay does not seem to be convincing at all.

The miscellaneous appeal along with the application under Section 5 of the Limitation Act was dismissed by an order dated April 16, 2018. Such order is under challenge in this civil revision application which has been filed only on September 8, 2025. Thus there has been a delay of more than seven years in filing the civil revision application. It appears that the petitioner is not at all diligent in prosecuting his claim.

The learned advocate appearing for the petitioner would contend that the delay was on account of Covid-19 pandemic. Since the impugned order in this civil revision application was passed in the month of April, 2018 i.e. long prior to the onset of Covid-19 pandemic, this Court is not inclined to accept the submission of the learned advocate for the petitioner that delay was due to Covid-19 Pandemic. The petitioner has also not satisfactorily explained the inordinate delay in filing this application under Article 227 of the Constitution of India. Though it is well-settled that there is no prescribed period of limitation for filing an application under Article 227 of the Constitution of India but since there has been an inordinate delay and latches on the part of the petitioner in approaching this Court challenging the order passed in the miscellaneous appeal, which has not been

satisfactorily explained, this Court is not inclined to grant any relief to the petitioner in this civil revision application.

For all the reasons as aforesaid, CO 3352 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)