

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

WPLRT 184 of 2025

Asit Baran Giri
Vs.
Kanchan Giri and others

For the petitioner	:	Mr. Debasis Nandi, Mr. Kumaresh Dalal, Mr. Atreya Chakraborty
For the respondent nos. 1 & 4	:	Mr. Puspendu Chakraborty, Mr. Basanta Guha Thakurata
For the State	:	Mr. Chandi Charan De, AGP, Ms. Saswati Chatterjee
Heard on	:	17.11.2025
Judgment on	:	17.11.2025

Sabyasachi Bhattacharyya, J.:-

1. On the prayer of learned counsel for the petitioner, leave is granted to the petitioner to add three other persons, who sailed on the same boat as the petitioner before the Tribunal, as proforma respondents in the present writ petition.
2. Heard learned counsel for the parties.

3. Learned counsel for the petitioner submits that the learned Tribunal erred in law and without jurisdiction in allowing the condonation application of the private respondent herein without there being sufficient explanation for the delay. Learned counsel points out that all throughout the pleadings in the application for condonation and the affidavit-in-reply filed by the private respondent before the Tribunal, the delay was mentioned to be of about 118 days, whereas the delay was actually much more. Thus, it is argued that there was insufficient explanation for such delay.
4. Learned counsel for the petitioner next argues that certain allegedly medical documents were annexed to the affidavit-in-reply before the Tribunal by the private respondent, which were of a different period than the period during which the delay was occasioned.
5. Learned counsel further submits that blame for the petitioner's own negligence has been sought to be shifted on the clerk of the learned Advocate for the private respondent dealing with the matter in the Tribunal and before the appellate authority, which has been deprecated by this Court on several occasions.
6. Learned counsel appearing for the petitioner further adds that the Tribunal, upon allowing the condonation application, admitted the original application of the private respondent without giving any hearing to the present petitioner, who was the respondent therein.
7. Lastly, learned counsel for the petitioner cites an unreported judgment of a coordinate Bench of this Court in *FAT 33 of 2024*

[*Baxter (India) Private Limited vs. Smt. Debjani Bose*] with regard to the governing legal principles regarding adjudication of applications under Section 5 of the Limitation Act.

8. Learned Additional Government Pleader submits that the caption of the condonation application was mentioned to be Section 5 of the Limitation Act whereas Section 10(2) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 is the relevant provision. However, serious objection is not raised by the State on such ground and it is submitted that the petitioner and the Tribunal ought to have mentioned the correct provision in respect of the condonation application.
9. Learned counsel appearing for the private respondents opposes the contentions of the petitioner and stands by the order passed by the Tribunal condoning the delay on the ground that sufficient explanation was shown before the Tribunal.
10. Upon hearing learned counsel for the parties and going through the materials before us, we find that the judgment which has been cited before us is a double-edged sword. In it, it was *inter alia* observed that the latest view taken by the Supreme Court is that in respect of condonation applications under Section 5 of the Limitation Act, in order to advance substantial justice, though a liberal and justice-oriented approach is to be kept in mind, but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act. It was further observed that the courts are empowered

to exercise discretion to condone the delay if sufficient cause has been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence.

11. It was further held by the coordinate Bench, following judgments of the Supreme Court, that delay condonation applications have to be decided on the parameters laid down for condoning the delay and such condonation for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.
12. In the present case, we find that in the condonation application, it was stated on oath that the applicant therein (private respondent herein) is a senior citizen suffering since long from various ailments and could not contact his Advocate timely so that the subject appeal could be filed within the stipulated period.
13. Also, it was mentioned therein that owing to her long suffering from various ailments and due to certain other reasons, the certified copy of the order could not be collected from the “lower court” in time. In her reply filed before the Tribunal, the private respondent/applicant therein stated that she contacted her Advocate and the delay in contacting the Advocate occurred due to her acute ailments from various “oldness disease” and orthopedic problems, for which the applicant had undergone intensive treatment from renowned doctors and hospitals.

14. It has further been stated in the condonation application and the reply of the petitioner before the Tribunal that the necessary medical certificates and prescriptions of her long-standing treatment could not be annexed to the original application due to the wrong communication of the clerk of the senior advocate of the applicant.
15. We find, accordingly, that sufficient and substantial explanation was given for the entire period of delay. We also have to take into consideration the fact that the applicant, who is a lady, lost her only son and her only daughter is married and she is staying in her in-laws' house.
16. Taking into context the marginalized social standing and somewhat helpless situation of the petitioner, it is not entirely unbelievable that due to her ailment and due to communication gap with the Advocate's clerk, the delay was occasioned. Proof to the hilt need not be given in respect of condonation applications, since a condonation application does not entail a full-fledged trial. The "sufficiency" of the explanation for the delay depends on the perspective of the concerned court/forum.
17. In the present case, even applying the tests laid down by the Supreme Court and discussed in *Baxter (India) Private Limited (supra)*, we find that the Tribunal acted entirely within its jurisdiction in accepting one of the plausible views by condoning the delay in preferring the original application.

18. Although fact remains that throughout the condonation application and the reply, the private respondent reiterated that the length of the delay was of 118 days, whereas the Tribunal proceeded on the premise that the delay was actually of 177 days, the erroneous mention of the number of days is irrelevant, since taking into consideration the entire pleadings of the condonation application and the affidavit-in-reply of the applicant/private respondent, it is evident that the entire period of delay has been explained substantially. It is well-settled that the delay need not be explained day-to-day but the entire period is required to be explained. Also, the delay of 177 days is not so inordinate that it would take the span of delay into the realm of absurd or inordinate delay.
19. Hence, we do not find any reason as to why the discretion exercised judicially by the Tribunal in condoning the delay should be interfered with.
20. Insofar as the argument that the original application was also stated to be admitted in the impugned order is concerned, there is no provision akin to Order XLI Rule 11 of the Code of Civil Procedure in the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, which requires any separate admission hearing to be given and/or any right of hearing to the respondents at the admission stage. The expression “admitted” used in the impugned order is equivalent to “registered” and was naturally used by the Tribunal after condoning the delay and taking the original application on board.

21. Insofar as the argument of the State regarding wrong caption being used is concerned, it is well-settled that mere erroneous mentioning of caption does not denude the forum/court of the jurisdiction to hear an application and grant relief if the said forum/Tribunal/court is otherwise empowered in law to do so.
22. Thus, the erroneous mention of Section 5 of the Limitation Act is immaterial inasmuch the Tribunal was empowered under Section 10(2) of the said Act to condone the delay and such exercise has been duly undertaken by the Tribunal on merits.
23. Taking into consideration all the above factors, we do not find any necessity of interfering with the impugned order.
24. Accordingly, WPLRT 184 of 2025 is dismissed on contest without any order as to costs, thereby affirming the order impugned therein.
25. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)