

11.06.2025
Court No.1
Item No.10
[Milan, A.R. (Ct.)]

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

FMAT 6 of 2025
With
CAN 1 2025

Khsmiendra Nath Roy
versus
Sabtri Roy & Ors.

Mr. Subhasish Misra,
Mr. Satyajit Paul,
Ms. Shreya Sarkar

....for the Appellant

The appeal is directed against the order dated 30th June, 2014 passed in West Bengal Estate Acquisition Act, 1953 (in short, "Estate Acquisition Act") passed by the Learned District Judge, Cooch Behar in E.A Appeal No.2 of 2009.

It is the case of the petitioner that immediately after passing of the said order dated 30th June, 2014, a review application was filed.

The said review application was rejected by an order dated 9th December, 2024. The appellant, therefor, has challenged the original order dated 30th June, 2014. There is as such a delay of 8 years and 176 days, and as per the appellant. It appears that the delay as per the report of the stamp reporter is 3097 days. The appellant has made an application under Section 5

of the Limitation Act, 1963 for condoning the delay and for admitting the appeal.

Before we go into the application for condonation of delay, we find that the West Bengal Estate Acquisition Act, 1953 is a specified Act within the meaning of West Bengal Premises Tenancy Act, 1997. The appeal, if any therefor, should be filed before the West Bengal Land Reforms and Tenancy Tribunal constituted under the 1997 Act. Posed with this fact, it is submitted on behalf of the appellant that liberty should be given to the appellant to withdraw the appeal and approach the Tribunal.

Considering the enormous delay and that an order rejecting a review application is not an appealable order in view of the provisions of order 47 Rule 7 of the Code of Civil Procedure, 1908 (in short, "CPC"), we permit the appellant to approach the Tribunal, if permissible in law. We also clarify that the leave granted to the appellant to approach the Tribunal, should not be construed in any manner that this Court has gone into the aspect of delay and condoned the same. The Tribunal, if approached should deal with the limitation aspect before going into the merits of the matter.

The appeal being FMAT 6 of 2025 and the connected application being CAN 1 of 2025 are dismissed for non-prosecution.

(Arindam Mukherjee, J.)

(Partha Sarathi Chatterjee, J.)