

JPD. 5.
July 30, 2025.
MNS.

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side

CO No. 86 of 2025

Shri Dhiren Roy @ Dhirendra Roy and others
Vs.
Sri Susen Kumar Das and others

Mr. Bapi Sarkar,
Mr. Roumyadip Saha

... for the petitioners.

Mr. Bikramaditya Ghosh,
Mrs. Supriya Singh,
Mr. Ved Rai,
Mr. Mayank Bhandari,
Mr. Vivek Saha

...for the opposite party.

1. The present challenge has been preferred against an order whereby the appeal filed by the petitioners against an order passed under Section 8 of the West Bengal Land Reforms Act, 1955 has been dismissed as time-barred, by holding that Section 5 of the Limitation Act is not applicable to an appeal preferred against such an order and rejecting the application for condonation of delay in filing the appeal.
2. Learned counsel appearing for the petitioners argues that although Section 5 of the Limitation Act is not applicable to an application under Section 8 of the West Bengal Land Reforms

Act, there is no bar in applicability of Section 5 to an appeal preferred against such an order under Section 9 of the said Act.

3. Learned counsel for the opposite party submits that since an appeal is a creature of statute and a specific limitation period has been stipulated in the West Bengal Land Reforms Act, 1955 in respect of an appeal, as Section 5 of the Limitation Act is not applicable to the original proceeding, by same logic, the same is also not applicable to an appeal preferred against such an order.
4. However, there is an implicit fallacy in the argument of the opposite party. The provisions of Section 5 of the Limitation Act are not applicable to an application under Section 8 of the West Bengal Land Reforms Act on the premise of the legal fiction that an original preemption application under Section 8 of the West Bengal Land Reforms Act, being an original proceeding, is akin to a suit.
5. However, such rigour is not applicable in respect of an appeal.
6. Even if it is to be construed that an application under Section 8 of the West Bengal Land Reforms Act is on a parallel footing as an

original suit, an appeal against a decree passed in a regular suit is amenable to Section 5 of the Limitation Act, although a civil suit is not. This is because Section 5 of the Limitation Act is applicable only in respect of appeals and applications but not to a suit.

7. By the self-same analogy, there is no bar of applicability of Section 5 of the Limitation Act to an appeal preferred against an order passed under Section 8 of the West Bengal Land Reforms Act.
8. That apart, Section 29(2) of the Limitation Act categorically provides that the Limitation Act shall apply to all proceedings unless there is a specific and express bar to such applicability. There being no such bar incorporated in respect of an appeal under Section 9 of the West Bengal Land Reforms Act, 1955, the provisions of the Limitation Act are applicable to such an appeal.
9. Thus, the appellate court refused to exercise jurisdiction vested in it by law in refusing to entertain the appeal and dismissing the appeal on the ground of bar of limitation by rejecting the application under Section 5 of the Limitation Act for condonation of delay in filing the same.

10. Accordingly, CO No. 86 of 2025 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 7 dated April 28, 2025 passed by the learned District Judge, Alipurduar in Miscellaneous Appeal No. 1 of 2025 and remanding the matter to the appellate court for the purpose of deciding the application under Section 5 of the Limitation Act on merits and thereafter, subject to the outcome of the said application on merits, to take a call on the appeal.

11. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)