

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

S.A. 34 of 2019

With

IA NO: CAN/1/2018(Old No:CAN/82/2018)

With

IA NO.: CAN/4/2019(Old No: CAN/252/2019)

With

IA NO.: CAN/5/2020(Old No:CAN/1169/2020)

***Manoj Kumar Chakraborty @ Kajal Chakraborty (Since Deceased)
Represented By His Legal Heirs Smt. Pratima Chakraborty & Anr.***

VERSUS

Ayakar Griha Nirman Samabay Samity Ltd. & Anr.

For the appellants:

Mr. Rajdeep Bhattacharyya, Adv.
Mr. Himadree Ghosh, Adv.

For the respondents:

Mr. Kamal Krishna Pathak, Adv.
Mr. Souvik Maji, Adv.
Mr. Koustav Seal, Adv.

Last Heard on: February 06, 2026

Judgment on: February 25, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was a defendant in a suit for eviction before Learned Civil Judge Senior Division 5th Court at Alipore South 24

Parganas being Title Suit No. 167 of 1993 in which the appellant/defendant suffered an eviction decree and preferred an appeal before the Learned District Judge South 24 Parganas, which failed. The appellant being aggrieved by the Judgment and Order dated 17-04-2015 passed by Learned Additional District Judge 8th Court Alipore South 24 Parganas in TA-212 of 2009 has come up with the instant appeal.

As the ground for dismissal of Appeal is due to dismissal of application for condonation of delay under Section 5 of the Limitation Act the scope of hearing of this appeal is under the provision laid down under Section 5 of the Limitation Act.

The Appeal was admitted by the Hon'ble Division Bench and the following substantial questions of Law was framed;

- 1) Whether the Court of appeal below rightly dismissed the application for condonation of delay holding that the appellant has not explained sufficient cause when the documents pertaining to his illness was annexed to the application for condonation of delay?
- 2) Whether the lapses and laches on the part of the conducting Advocate is a sufficient ground for condonation of delay in filing the appeal?

Heard Learned Advocate for the appellants and Learned Advocate for the respondents. Persued the Judgment and Order under appeal.

Learned Advocate for the appellant submits that the defendant no-1 initially appeared in the suit as D.W. 1 and filed his affidavit in chief but due to

health conditions was constrained to appear in the cross examination. The Defendant No-1 was a cardiac patient and since 2003 he was suffering from various ailments. The defendant no-1 lastly appeared before the Trial Court on 12-09-2007. The Defendant No-1 could not participate in the cross-examination as he felt sick in the Court premises and accordingly had to leave the Court premises. The next date accordingly was fixed on 15-02-2008 and on such day although he was present but the proceeding was adjourned. The defendant no-1 requested his lawyer to take necessary steps and same was assured but proper steps were not taken. The health of the defendant No-1 deteriorated in March 2008 and he was hospitalized multiple times and was in bed rest while he was at home. Learned Advocate further submits that in July 2009 the health condition of the Defendant No. 1 started improving and he gradually started his normal, activities. Learned Advocate contacted his Lawyer at his chamber and wherefrom he came to know that the suit was decreed on 19-03-2008. The Defendant no-1 immediately directed his lawyer to take necessary steps for obtaining certified copy and certified copy was delivered on 24-07-2-009 and the appeal was filed 27-07-2009. Thus there was a delay of 496 days. Learned Advocate submits that the appellant adduced evidence in the hearing of the condonation of delay and filed all medical papers, and gave reasonable explanation for condonation of delay but the same was not accepted by the First Appellate Court.

Learned Advocate relies upon the following judicial decisions:

N.Balakrishnan VS M.Krishnamurty

Reported in 1998(7) SCC-P-123.

Ram Nath Sao VS Gobardhan Sao.

Reported in 2002(3) SCC-127.

Urban Improvement Trust VS Vindhya Devi and ors.

Reported in 2024 SCC. Online S.C.-3725.

Inder Singh VS State of Madhyapradesh.

Reported in 2025 SCC Online S.C. 600.

Learned Advocate for the respondents submits that the Judgment of Title Suit No-167 of 1993 of the 5th Court of Learned Civil Judge (Senior Division) at Alipore was passed on 19-03-2008. There were three Learned Advocates who were conducting the case. Learned Advocate further submits that certified Copy of the Judgment and Decree was applied on 26-11-2008 and court fees were notified on 10-12-2008 and were deposited on the same date. The copy was ready delivery on 20-12-2008 and was taken delivery on 02-04-2009 from copying department. Learned Advocate also submits that Appeal was filed on 27-07-2009, and Limitation Application was filed on 28-08-2009.

Learned Advocate submits that Section 5 of the Limitation Act 1963 was not filed with the appeal. As condonation of delay application was not filed with the appeal the appeal was not maintainable. The appeal is barred by limitation for 464 days from the date of passing the order if the appeal is assumed to be filed on 27-07-2009 but according to the provision of Order 41 Rule 3(a) of Code of Civil Procedure it will be deemed to be filed on 28-08-2009

and not 24-07-2009. Learned Advocate further submits that the appellants contend Manoj Kumar Chakraborty was suffering from various illness from passing the judgment till 24-07-2009. As per the certificate issued by Dr. D.B. Chatterjee it appears that the appellant was discharged from Ruby General Hospital on 14-02-2009, and was advised to take rest at home. His bilirubin was within normal limit, blood sugar controlled and he was free from chest pain from last three months from 14-02-2009 and he could resume normal activities following medical restriction. The said medical certificate was not filed with the appeal and application. The self same medical certificate on the self same words and in verbatim language once again issued by Dr. D.B. Chatterjee and was obtained by the appellants on 24-07-2009. Thus there is no bona fide cause of the delay, and the certificate is manufactured by the appellants in collusion with Dr. D.B. Chatterjee. Learned Advocate draws attention to the statement in paragraph 12 of the application under Section 5 of the Limitation Act 1963 where the appellants/defendants contended that after recovery from illness the appellants contacted with their present Learned Advocate and was advised to prefer appeal. But in paragraph 12 of the Affidavit in Chief P.W. 1 stated "After having been resumed normal duties/activities he immediately contacted his Learned Advocate on 24-07-2009 and to his utter surprise he received the news that the suit in the meanwhile decreed against them in absence of their representative on behalf of them since 20-02-2009 and in paragraph 13 of the Affidavit-in-Chief at Pg-8 it is alleged that "As a result of which we immediately contacted my present Learned Advocate with the

certified copy of Judgment and Decree which however was delivered to me on 24-07-2009 by my said erstwhile Learned Advocate and the present Learned Advocate of us instructed to prefer appeal.....”

Learned Advocate further draws attention to the discrepancy in the cross examination where once the defendant no-1 stated that he instructed his present Advocate to apply for certified copy and subsequently he stated that he instructed his former Advocate.

Learned Advocate also submits that no prescription and cash memo for purchase of medicine have been filed in this case which are required to show the bona fide proof of the truth of the alleged illness.

Learned Advocate relies upon the following Judicial decision.

Shimma (Dead) by LRS. VS Karnataka Housing Board and Ors.

Reported in 2025 OINSC 1104.

The ground furnished by the Appellants/defendants was illness of defendant no-1, his hospitalization advise of bed rest and his inability to resume normal functioning due to ill health. From the medical documents there is an indication that the defendant no-1 had certain history of ailments. His hospitalization and subsequent rest advised by the doctor makes the case of the appellants for condonation of delay more stronger. The oral statement with regard to illness medical prescription and the hospitalization of defendant no-1 and his subsequent death during pendency of this appeal will go to show that defendants have sufficient ground for delay of preferring appeal before the first appellate Court.

In the case of N. Balakrishnan VS M. Krishnamurthy (supra) the Hon'ble Supreme Court observed as follows:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not

because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in b foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party d deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

In the case of Ummer VS Patengal Subida and ors. Reported in (2018) 15 SCC. P-127. The Hon'ble Supreme Court observed as follows:

"12. It is not in dispute that the appellant is an old man and in his late sixties. It is also not in dispute that he did suffer heart disease during the relevant period and later he was down with dengue fever. It is also not in dispute that he was hospitalised to get medical

treatment for these two ailments for a long time to disputes going on in his family and was not able to attend to his day-to-day duties due to his old age and prolonged ailments.

. 13. *It is an admitted fact that the High Court did not dispute the genuineness of these facts and nor disputed the genuineness of the documents filed by the appellant in support of the cause pleaded. On the other hand, the High Court found as a fact that the appellant did suffer these ailments.*

14. *In the light of the aforementioned undisputed facts, in our opinion, the High Court should have taken liberal view in the matter and held the cause shown by the appellant as "sufficient cause" within the meaning of Section 5 of the Limitation Act and accordingly should have condoned the delay in filing the appeal. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law."*

In the case of Inder Singh VS State of Madhya Pradesh reported in 2025 SCC Online S.C. 600 the Hon'ble Supreme Court observed as follows:

"16. The Court in Ramchandra Shankar Deodhar v. State of Maharashtra, (1974) 1 SCC 317 held:

'10. ... There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this

delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110, 116: (1969) 2 SCR 824] "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit.... It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose",

In the case of Shivamma (supra) the Hon'ble Supreme Court observed as follows:

"116. As already discussed in the foregoing parts, for the purpose of seeking condonation of delay under Section 5 of the Limitation Act, the party has to demonstrate the existence of a "sufficient cause" "within the prescribed period" to the satisfaction of the court. Thus, establishment of "sufficient cause" is the first ingredient for the purpose of condonation of delay. Insofar, as what is meant by the phrase "sufficient cause" neither Section 5 nor the Limitation Act itself provide any guidance on what its

constituent elements ought to be. Instead, Section 5 leaves the task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and individual circumstances of each case.

117. While there is no arithmetical formula, through decades of judicial application, certain yardsticks for judging the sufficiency of cause for condonation of delay have evolved. Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. The court ought to be cautious while undertaking such an exercise, being circumspect against condoning delay which is attributable to the applicant. Although the actual period of delay might be instructive, it is the explanation for the delay which would be the decisive factor.

119. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice – that being the life-purpose for the existence of the institution of courts. Despite the liberal approach being adopted in such matters, which was termed justifiable, this Court lamented that the message had not percolated down to all the other courts in the hierarchy and, accordingly, emphasis was laid on the courts adopting a liberal and justice-oriented approach. [See: Sheo Raj Singh vs. Union of India, (2023) 10 SCC 531]

120. sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may

not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an “explanation” and an “excuse.” An “explanation” is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an “explanation” from an “excuse.” Although people tend to see “explanation” and “excuse” as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. [See: Sheo Raj Singh vs. Union of India, (2023) 10 SCC 531]

Upon considering the judicial decisions and the facts of the case this Court is of the view that the appellants have shown sufficient grounds for condonation of delay. The decision of Shivamma (supra) relied upon by the Learned Advocate for the respondents where the Hon’ble Supreme Court refused to condone delay is not applicable to the facts of the case. The observation of the Learned First Appellate Court that the doctor was not produced before Court to prove the documents cannot be sustained. An application for condonation of delay is not required to be proved beyond reasonable doubt but on the pre-ponderance of probability thus a doctors presence is necessary when the medical prescriptions appear to be highly suspicious. In the instant case the respondents have not been

able to show that the medical documents are suspicious on the other hand the said documents are marked exhibits without objection.

Now with regard to the laches of the Advocate in informing the appellant whether it is a ground for condonation of delay, it is to be remembered that Advocates are officers of Court and litigants depend upon their advice and acts thus Advocates laches provide ground for condonation of delay. Although communication between Advocate and client cannot be proved unless the Learned Advocate due to whose laches litigant suffered is appearing in subsequent proceedings or in condonation of delay application but when there is certain indication in the record the same should be considered. In the instant matter although the suit was decreed in the month of March 2008 but certified copy was applied by former Advocate in the month of November 2008. Thereafter although the copy was ready for delivery in the month of December but the delivery was obtained by the Learned Advocate in the month of April. It is not the case of the appellant that after obtaining certified copy pursuant to passing of decree there is huge delay. An Advocate being an officer of the Court on disposal of the case has a duty to apply for certified copy of the decree pursuant to drawing up and completing the decree and to handover the same to his client for necessary steps upon payment of costs incurred. Even if his client is unable to come for a long period due to illness he has the said duty. In the instant case such application is not made promptly which gives

indication of laches. Thus the appellants/defendants have been able to prove that delay for not filing the appeal within the period of Limitation was due to the cause of illness of the defendant no-1 and laches on the part of their Advocate.

In the facts and circumstances this Court is of the view that the Learned First Appellate Court erred in dismissing the application for condonation of delay when the documents pertaining to illness was annexed to the application for condonation of delay and marked exhibit without objection. Secondly the lapse and laches on the part of conducting Advocate is sufficient ground for condonation of delay in filing the appeal. Thus the appeal should succeed. However in the interest of justice the appellants should be put to condition of paying cost.

Hence the Appeal SA-34/19 stands allowed.

The Judgment and order dated 17-04-2015 passed by Learned Additional District Judge 8th Court Alipore South 24 Parganas in TA-212 of 2009 is set aside. The application for condonation of delay made under Section 5 of the Limitation Act before the Learned 1st Appellate Court in the said appeal also succeeds. The Learned First Appellate Court shall proceed with the hearing of Appeal being TA-212 of 2009 on merits on the condition that the Appellants pay costs of Rs. 4,000/- to the respondents and Rs. 1,000/- to the State Legal Service Authority West Bengal within 3 weeks.

The Trial Court Records be sent back.

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

(Biswaroop Chowdhury, J.)