

357
Court No. 6
13.5.2026
SB

C.O. 3700 of 2025
CAN 1 of 2026
Akash Narayan Sahgal
VS
Akshaya Jha & Anr.

Mr. Rudraman Bhattacharyya
Mr. L. Vishal Kumar
Mr. Rajdeep Mantha
Ms. Soumosree Chatterjee ... for the petitioner

Mr. Tanmoy Mukherjee
Mr. Krishanu Adhikary
Ms. Sulagna Mukherjee ... for O.P. No. 1

Mr. Soumya Majumder, Sr. Adv.
Mr. Souvik Das ... for O.P. No. 2.

1. This revisional application assails an order dated 04.9.2025 whereby the learned Trial Court has observed that the Misc. Case (Com) 5 of 2025 arising out of Money Suit No. 26 of 2022 [Money Suit (COM) 63 of 2022 (renumbered)] filed under Order 9 Rule 13 of the Code of Civil Procedure, 1908 is admitted and has thereby posted the opposite parties' application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the application under Order 9 Rule 13 for hearing to a future date.
2. Mr. Bhattacharyya, learned senior advocate appearing for the petitioner submits that there is no provision in the Civil Procedure Code, 1908 providing for admission of an application under Order 9 Rule 13 of the Code and as such, the learned Trial Court could not have admitted such application, all the moreso when the same had been filed beyond time.

3. It is submitted that it will be evident from the order impugned that the application seeking setting aside *ex-parte* decree was accompanied by an application for condonation of delay and prior to the delay being condoned, the application would be still born.
4. Mr. Mukherjee, learned advocate appearing for the opposite party no. 1 fairly submits that the observation of the learned Trial Court to the extent that the Misc. Case under Order 9 Rule 13 has been admitted is not legally sound as there is no provision for admission of such an application in the Code.
5. Having heard the learned advocates for the parties and having considered the material on record, this Court is of the view that justice would be sub-served if the observation of the learned Trial Court to the extent "*let the instant Misc. Case be admitted*" is set aside.
6. The learned Trial Court shall first hear out the application under section 5 of the Limitation Act, 1963 upon affording an opportunity to the petitioner herein to use a written objection thereto and then proceed with the application under Order 9 Rule 13 if delay occasioned by the opposite party in preferring such application is condoned.
7. It is submitted by Mr. Bhattacharyya, that time to file written objection had been granted by the learned Trial Court but such time has expired.
8. Mr. Mukherjee, learned counsel appearing for the opposite party no. 1 submits that certain annexures in the application for condonation of delay filed by

the opposite parties are missing. He seeks leave to append the same to the said application.

9. In order to expedite the hearing of the application under Section 5, the following directions are issued:-

a. As prayed for the opposite parties they are granted leave to append the missing annexures to the application under Section 5 within ten days from date.

b. A complete copy of Section 5 along with all annexures shall be served upon the petitioner forthwith thereafter.

c. Petitioner shall have the liberty to use written objection to such application under Section 5 within three weeks from the date of service of a complete copy thereof.

10. It is clarified that by this order leave has only be granted to annex copies of missing documents to application under Section 5 filed by the opposite parties.

11. The learned Trial Court is requested to dispose of the said application under Section 5 as expeditiously as possible and preferably within a month from the date of completion of the pleadings.

12. C.O. 3700 of 2025 stands disposed of. No costs.

CAN 1 of 2026

13. This is an application for extension of interim order.

14. In view of the above order that has been passed today whereby C.O. 3700 of 2025 has been disposed of, CAN 1 of 2026 also stands disposed of.

(OM NARAYAN RAI, J.)