

Item No.3
16.02.2026
Court. No. 7
GB

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE*

CO 5 of 2026

B.R. Real Estate Private Limited
VS
Ranjit Deb Singha

*Mr. Dr. Navin Barik,
Ms.. Esha Acharya,
Mr. R. Chakraborty*

...for the Petitioner.

*Mr. Debanjan Das,
Mr. Samrat Acharya,
Mr.S. Bhowmick*

...for the Opposite Party.

1. The petitioner is aggrieved by an order dated December 6, 2025, passed by the learned Additional District Judge, 2nd Court, Siliguri in Misc. Appeal No.9 of 2024.
2. By the order impugned, the learned court allowed the misc. appeal on the ground that the application under Section 5 of the Limitation Act and the application under Order 9 Rule 13 of the Code of Civil Procedure should have been dismissed by two separate orders.
3. In the opinion of the court, rejection of an application under Section 5 of the Limitation Act was a revisable order and the rejection of an application under Order 9, Rule 13 of the Code of Civil Procedure was an appealable order. Thus,

separate orders should have been passed. The trial court was directed to rehear the matters.

4. In my view, the moment the application under Section 5 of the Limitation Act was rejected and the delay in filing the application under Order 9 Rule 13 of the Code of Civil Procedure was not condoned, there is no application under Order 9 Rule 13 of the Code of Civil Procedure, in the eye of law. Thus, the order of dismissal of the Misc. Case on the ground of delay, amounts to a final order, from which an appeal lies.
5. Under such circumstances, the learned appeal court must treat the Misc. Appeal No.9 of 2024 as an appeal from an order rejecting an application under Order 9 Rule 13 of the Code of Civil Procedure on the ground of delay. The order impugned is set aside. The learned appeal court is directed to hear and dispose of the Misc. Appeal No.9 of 2024 on its own merits. The decision of the court shall be restricted to whether the application for condonation of delay was rightly rejected or not and/or whether the decision of the learned trial court was sustainable in law.
6. Accordingly, the revisional application is disposed of.
7. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)