

Item No.15
17.02.2026
Court. No. 7
GB

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

CO 148 of 2024
With
CAN 1 of 2025

Shekh Sabir
VS
The Chairman, Haldibari Municipality & Ors.

Mr. Saumyajyoti Dutta

...for the Petitioner.

In Re: CAN 1 of 2025

1. This is an application for restoration of CO 148 of 2025. The revisional application was dismissed for default on January 9, 2026.
2. Upon perusing the explanations given in paragraphs 2 to 7, this Court is satisfied that the petitioner was prevented by sufficient cause from attending the Court when the matter was dismissed for default.
3. Accordingly, CAN 1 of 2025 is allowed and disposed of.
4. CO 148 of 2024 is restored to its original file and number.
5. CAN 1 of 2025 is allowed in the absence of the opposite parties as none appeared on behalf of the opposite parties on the earlier date and as such, service of notice can be dispensed with.

In Re: CO 148 of 2024

6. The revisional application has been filed by the plaintiff in Title Suit No.16 of 2017, which is pending before the learned Civil Judge (Junior Division), Mekhliganj.
7. By the order dated June 3, 2017, the suit was taken up ex parte and the application for temporary injunction was allowed upon directing both parties to maintain status quo with regard to nature and character of the suit property, as well as, its possession till disposal of the instant suit.
8. Aggrieved by the said order, the opposite party nos.1 and 2 (defendants) preferred a misc. appeal before the learned Additional District Judge, Mekhliganj being Misc. Appeal No.16 of 2017. The appeal was time barred.
9. The learned appellate court admitted the appeal thereby condoning the delay in filing the misc. appeal, inter alia, holding that the order dated April 6, 2017 was confusing. However, the suit was fixed for ex parte hearing, against the defendant nos.1 to 4.
10. The appellate court accepted the contentions of the opposite party nos.1 and 2 that the appeal was filed within 30 days from the date of knowledge of the order, by which the injunction application was disposed of.

11. The learned advocate for the petitioner submits that the application was allowed by the learned court on sympathetic grounds and unless the delay was properly explained, the delay could not be condoned.
12. Reference is made to the decision of the Hon'ble Apex Court in the matter of ***Pathapati Subba Reddy (Died) by L.Rs. & Ors. versus The Special Deputy Collector (LA)*** reported in ***2024 INSC 286***.
13. I have perused the case records and it appears that the suit was proceeding ex parte. The order disposing of the application for injunction was also passed ex parte. The records do not reveal, the mode and manner in which the order of injunction was served upon the opposite party nos.1 and 2. Although reliance has been placed on an affidavit-in-opposition filed in a writ petition, in which the opposite parties have mentioned about the pendency of the suit and the order of ad interim injunction, the communication of the order of injunction or service of the order of injunction upon the opposite party nos.1 and 2 is not available from the records.
14. The specific case of the opposite party nos.1 and 2 is that, the said opposite parties came to know of the said order when it was electronically communicated to them sometime in November

2017 and the appeal was filed within thirty days therefrom, that is, from the date of knowledge. This aspect was accepted by the learned appellate court.

15. I do not find any illegality in the order impugned.

The order impugned cannot be said to be either perverse or without jurisdiction or that it suffers from error apparent on the face of record. The scope of interference of the High Court under Article 227 of the Constitution of India is limited. The appellate court has exercised discretion and allowed the delay in filing the appeal which was around five months from the date of the order, but within thirty days from the date of knowledge.

16. Under such circumstances, the revisional application is disposed of. The learned court is directed to dispose of the misc. appeal expeditiously.

17. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)