Judgment Dated: 23-11-2026
WBCHCJ0043892026

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 133 of 2026

CAN 1 of 2026

MAHABIR PRASAD SETHI @ MAHABIR SETHI .....PETITIONER

-VERSUS-

RAJESH SARAOGI .....OPPOSITE PARTY

For the Petitioner : Mr. Bhaskar Roy Mahasaya,
Ms. Taniya Bhowmik.

For the Opposite Party : Mr. Bikramaditya Ghosh,
Mr. Vivek Saha,
Mr. Hrisav Anirban Ghosh.

Hearing concluded and judgment
delivered on : 23.11.2026

OM NARAYAN RAI, J.:-

1. Supplementary affidavit filed in the Court today is taken on record. In terms of the directions passed on November 17, 2026 prior service thereof has already been effected upon the learned Advocate appearing for the opposite party,

2. This revisional application lays challenge to an order dated July 13, 2026 passed by the learned Civil Judge (Senior Division), Alipurduar in Misc. Appeal No. 05 of 2025 whereby the said Misc. Appeal has been allowed subject to payment of costs of Rs.50,000/- by the opposite party herein (i.e. the appellant in the appeal) to the petitioner herein (i.e. the respondent in the appeal).

3. The petitioner had instituted a suit being O.C. 138 of 1995 praying *inter alia* for a decree of declaration that a deed of conveyance was of no effect and not binding

upon him and for permanent injunction. Upon issuance of summons, the defendants in the suit entered appearance through a learned Advocate who had filed his Vakalatnama. However, the defendants failed to file their written statement. The suit was, therefore, set *ex parte* against the defendants and ultimately decreed *ex parte* on February 05, 2001.

4. In the year 2023, i.e. more than 22 years after passing of the said decree, the opposite party, who was the defendant no.1 in the suit, filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908[1] praying for setting aside of the said *ex parte* decree. The said application was registered as Misc. Case No.11 of 2023 before the learned Civil Judge (Junior Division) Alipurduar. Since the said Misc. Case had been filed beyond the statutory period provided therefor, the same was accompanied by an application under Section 5 of the Limitation Act, 1963[2] seeking condonation of delay in filing the said Misc. Case.

5. Upon a contested hearing, the learned Trial Court rejected the said application for condonation of delay by an order dated January 30, 2025 by observing that the explanation offered by the opposite party (the petitioner before the learned Trial Court) for the purpose of getting the delay condoned was not satisfactory. Consequently the Misc. Case was dismissed by an order dated January 30, 2025.

6. The said order dated January 30, 2025 whereby the opposite party's Misc. Case was dismissed was carried in appeal being Misc. Appeal No. 05 of 2025 before the learned Civil Judge (Senior Division), Alipurduar. The said Misc. Appeal was allowed by the learned Civil Judge (Senior Division), Alipurduar by an order dated July 13, 2026. Feeling aggrieved thereby the petitioner has approached this Court by filing the present revisional application.

7. Mr. Bhaskar Roy Mahasaya, learned Advocate appearing for the petitioner submits that the order impugned suffers from several fundamental infirmities.

8. It is submitted that the learned Appellate Court has proceeded on the basis that the opposite party did not have notice of the suit and that proceeding on such premise, the learned Appellate Court has condoned the delay of more than 22 years in filing the application under Order IX Rule 13 of the Code. It is further submitted that the explanation furnished by the opposite party seeking condonation of delay in preferring the said application was not at all sufficient to get an inordinate delay of more than two decades condoned.

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[1] **Hereafter" the Code"**
[2] **Hereafter "the 1963 Act"**

9. Mr. Roy Mahasaya has taken this Court through several orders passed by the learned Trial Court (copies whereof have been annexed at pages 17, 18 and 19 of the revisional application) to demonstrate that the opposite party had knowledge of the suit and was represented before the learned Trial Court.

10. He has also invited the attention of this Court to a copy of the Vakalatnama (filed on behalf of the defendants in the suit) as annexed to the supplementary affidavit to demonstrate that the opposite party had executed Vakalatnama in favour of a learned Advocate to represent him before the learned Trial Court.

11. It is submitted that in view of the unimpeachable material on record, it was not open to the opposite party to contend before any of the learned Courts that he did not have notice of the suit.

12. Mr. Bikramaditya Ghosh, learned Advocate appearing for the opposite party submits that the application under Section 5 of the 1963 Act filed by the opposite party seeking condonation of delay of 22 years and two months in filing the application under Order IX Rule 13 of the Code sufficiently explains the delay and that the learned Appellate Court has not committed any error in allowing the appeal upon taking into consideration the explanation furnished by the opposite party in such application.

13. Heard learned Advocates appearing for the respective parties and considered the material-on-record.

14. The material on record presents insurmountable hurdles to sustaining the opposite party's application under Order IX Rule 13 of the Code after the expiry of more than two decades from the date of passing of the *ex parte* decree without any satisfactory explanation therefor.

15. The orders dated January 16, 1996 and February 12, 1996 passed by the learned Trial Court in O.C. 138 of 1995 clearly indicate that the opposite party along with other defendants in the suit was represented through a learned Advocate and sought for adjournment of the proceedings. The order dated May 27, 1996 records that despite sufficient time being granted, the opposite party (and the other defendants in the suit) remained unrepresented before the learned Trial Court and, as such, the suit was set *ex parte*. The judgment and *ex parte* decree which ultimately came to be passed in the said suit on February 05, 2001 also records the aspect of default on the part of the defendant (opposite party herein) in contesting the suit that led to the suit being set *ex parte*. A copy of the Vakalatnama which

has been brought on record by the petitioner by way of a supplementary affidavit also evinces that the opposite party was indeed represented by a learned Advocate before the learned Trial Court.

16. In such view of the matter, the very basis of the opposite party's assertion that the opposite party did have knowledge of the proceedings for want of service of summons gets knocked off.

17. Even otherwise, if all of the above is ignored and the opposite party's case as run in the application under Order IX Rule 13 of the Code and the accompanying application under Section 5 of the Limitation Act, are taken at face value, then also, the opposite party's case would be liable to be dismissed.

18. To wit, it is the opposite party's own case that he got knowledge of the *ex parte* decree on March 14, 2021. The Misc. Case under Order IX Rule 13 of the Code was filed only in the year 2023. The application under Section 5 of the 1963 Act seeking condonation of delay (as annexed to the supplementary affidavit) provides the following explanation in such regard:-

> *"13. That there is no willful latches and/or willful delay in filing this application under order IX rule 13 of the Civil Procedure Code as the petitioner had no knowledge about the said exparte decree passed against him till receipt of the notice dated 14.03.2021 of filing of the misc. appeal case no. Alipurduar Appeal Case No.XIII-B/03/V-7/LAW/DLLRO/APD/2022 by the plaintiff against the petitioner."*

19. Evidently, there is no explanation as to what happened between March 14, 2021 and the date in the year 2023 when Misc. Case 11 of 2023 under Order IX Rule 13 of the Code was ultimately filed. It is well settled that delay for the entire period from the date the clock of limitation begins to tick, for filing an application or appeal, till the date of filing of such application or appeal must be satisfactorily explained. In such context the following observations of the Hon'ble Supreme Court in the case of ***Shivamma vs. Karnataka Housing Board***[3] deserve notice:

> *"**40.** As such, under Section 5 of the Limitation Act, for the purpose of seeking condonation of delay in filing of an appeal or application, as the case may be, beyond the stipulated period of limitation, the delay in the filing has to be explained by demonstrating the existence of a "sufficient cause" that resulted in such delay for both the prescribed period of limitation as-well as the period after the expiry of*

[3] **2025 SCC OnLine SC 1969**

limitation, up to actual date of filing of such appeal or application, as the case may be, or to put it simply, explanation has to be given for the entire duration from the date when the clock of limitation began to tick, up until the date of actual filing, for seeking condonation of delay by recourse to Section 5 of the Limitation Act.

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50. *Thus, the only natural corollary that could be supplied to the aforesaid is that, the phrase "within such period" must then necessarily be construed to refer and encompass both; the original prescribed period of limitation as-well as the period subsequent to its expiry, extending up to actual date of filing of the appeal or application, as the case may be, i.e., the entire continuum commencing from the point at which the limitation period first began to run, until the eventual filing of the appeal or application, as the case may be. An interpretation, which is also naturally apparent and forthcoming, when the phrase "within such period" is read and understood in conjunction with the expressions "after the prescribed period" and "for not preferring the appeal or making the application", as contained in the said provision.*

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57. *Thus, the party would effectively be required to only come and explain the delay in filing of the appeal or application, as the case may be, only from the last day on which the limitation would have expired, till the actual date of filing of such appeal or application.*

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112. *To say, that the purpose for demonstrating "sufficient cause" is to exclude only that extent of period which would once again put the litigant back into the last day on which, he could have filed the appeal or application, would, in our opinion, gravely misconstrue the entire mechanism of Section 5 of the Limitation Act. Thus, the expression "within such period" for this reason also cannot be possibly construed to mean the period from the last day of expiry of the limitation, till the actual date of filing of appeal or the application, as understood by Rewa Coal Fields (supra). The phrase "extension" used in Section 5 of the Limitation Act is not a misnomer.*

113. *It is for this reason that the decisions of this Court in Ajit Singh Thakur (supra) and Ramkumar Choudhary (supra) held that "sufficient cause" for the delay in filing of an appeal or application, as the case may be, has to be established by some event or circumstance that had arisen before the limitation expired and that the party seeking condonation has to explain the delay the entire continuum commencing from the point at which the limitation period first began to run, until the eventual filing of the appeal or application, as the case may be.*

114. *We may, with a view to obviate any confusion, clarify that the observations made by this Court in Ramkumar Choudhary (supra), particularly that "what events occurred after the 91st day till the last is of no consequence" should not be construed devoid of its context. When this Court in Ramkumar Choudhary (supra) said that events after the expiry of limitation till the date of actual filing would be of no consequence, the same was made in view of the well-established rule that "sufficient cause must be establish that because of some event or circumstance arising before the limitation expired". The aforesaid observations of "what events occurred after the*

91st day till the last is of no consequence" in Ramkumar Choudhary (supra) were made in the peculiar facts of that case, where the appellant had failed to assign any "sufficient cause" occasioning during the period of limitation, which rendered the events occurring after the expiry of limitation as irrelevant.

***115.** However, as is manifest from the entire discussion above, for the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the delay has to be explained by establishing the existence of "sufficient cause" for the entirety of the period from when the limitation began till the actual date of filing. In other words, if the period of limitation is 90-days, and the appeal is filed belatedly on the 100th day, then explanation has to be given for the entire 100-days."*

20. The stark facts of the case as well as the settled position in law seem to have escaped the notice of the learned Appellate Court while deciding the opposite party's Misc. Appeal No. 05 of 2025. The order impugned therefore warrants interference.

21. For all the reasons aforesaid, the order impugned dated July 13, 2026 passed by the learned Civil Judge (Senior Division), Alipurduar in Misc. Appeal No. 5 of 2025 stands set aside.

22. C.O. 133 of 2026 is allowed. No costs.

23. CAN 1 of 2026 which is an application for extension of the interim order does not survive upon disposal of the main revisional application. The same stands closed.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)