

13.02.2026
Item No.38
Ct. No.4
RP

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

CO 239 of 2025

**Mrityunjoy Saha
Vs.
Goutami Roy**

Mr. Satyaki Basu
..For the Petitioner

1. Affidavit-of-service filed in Court today is taken on record.
2. It is submitted by Mr. Basu, learned advocate that he is representing the petitioner on being appointed by the Calcutta High Court Circuit Bench Legal Services Committee.
3. In course of his submission Mr. Basu at the very outset draws attention of this Court to the impugned Order No.37 dated 31.10.2025 as passed by the learned Additional District & Sessions Judge, Fast Track Court at Coochbehar in connection with Misc. Judicial Case No.53 of 2022 arose out of an application under Order IX

Rule 13 of the Code of Civil Procedure read with Section 151 thereof at the instance of the opposite party herein.

4. It is submitted by Mr. Basu that on perusal of the internal page no.5 of the impugned order dated 31.10.2025 it would reveal that the learned trial Court though noted that the said application under Order IX Rule 13 of the Code of Civil Procedure has been filed beyond the period of limitation and further noted that the opposite party herein, being the petitioner of the said Misc. Judicial Case No.53 of 2022, never filed any application for condonation of delay, even then a favourable order has been passed in favour of the opposite party herein whereby and whereunder the learned trial Court set aside the ex parte Order No.7 dated 2.8.2022 as passed in MAT Suit No.122 of 2022.
5. At this juncture, Mr. Basu further draws attention of this Court to the later part of the selfsame impugned order. It is

submitted by Mr. Basu that from the said later part of the order it would reveal that on the said very date the opposite party herein filed an application under Section 5 of the Limitation Act for condonation of delay, which was, however, rejected by the learned trial Court.

6. It is, thus, submitted by Mr. Basu that in the facts and circumstances as pleaded before this Court there cannot be any occasion to pass a favourable order in favour of the opposite party herein.
7. This Court meticulously perused the entire materials placed before this Court. This Court has also given due consideration over the submission of Mr. Basu.
8. On perusal of the impugned order dated 31.10.2025 it reveals that the learned trial Court while disposing the petition under Order IX Rule 13 of the Civil Procedure Code as filed by the opposite party herein came to a finding that the said application was filed beyond the period of limitation

and even then the learned trial Court condoned the delay suo motu based on many decisions of the Hon'ble courts, which is, however, not indicated in the said impugned order.

9. It is peculiar to note further that at the later part of the said impugned order dated 31.10.2025 the selfsame trial Court rejected the prayer for condonation of delay.
10. In view of factual scenario as discussed hereinabove, this Court finds that serious miscarriage of justice occurred while passing the impugned order.
11. It further appears to this Court that the learned trial Court had no occasion to consider the petition under Order IX Rule 13 of the Civil Procedure Code as filed by the opposite party herein without condoning the delay in filing the said application. As rightly pointed by Mr. Basu that in the later part of the impugned order the learned trial Court rejected the petition

for condonation of delay as filed under Section 5 of the Limitation Act.

12. In view of such, this Court finds sufficient merit in the instant revisional application.

13. Consequentially the Order No.37 dated 31.10.2025 as passed by the learned District Judge, Fast Track Court at Coochbehar in Misc. Judicial Case No.53 of 2022 arising out of MAT Suit No.122 of 2022 is hereby set aside.

14. Consequentially the Order No.7 dated 2.8.2022 as passed by the learned Additional District Judge, 3rd Court, Coochbehar in MAT Suit No.122 of 2022 is hereby revived.

15. The application, being CO 239 of 2025, is hereby allowed.

16. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(PARTHA SARATHI SEN, J.)