

OCD-1

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**APOT/109/2026
IA NO: GA-COM/1/2026**

**THE PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD.
-VS-
UCO BANK**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Rahul Karmakar, Adv.
Mr. Tapan Nag Chowdhury, Adv.

For the Respondent : Mr. Sailesh Mishra, Adv.
Mr. Prasenjit Das, Adv.

HEARD ON : 30.06.2026

DELIVERED ON : 30.06.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a plaintiff and directed against the order dated May 20, 2026 passed in RVWO/8/2026.
2. By the impugned order, learned Trial Judge allowed the Memorandum of Review after condoning the delay of 284 days in filing the review proceedings.
3. Learned Advocate appearing for the appellant submits that, no opportunity was granted to the appellant to file an affidavit dealing

with the allegations made in the application for condonation of delay. He relies upon **(2024) 12 SCC 336 [Pathapati Subba Reddy (Died) by Legal Representatives and Others Vs Special Deputy Collector (LA)]** in support of his contention that, the appellant was entitled to an opportunity to deal with the allegations made in the application for condonation of delay. Since such opportunity was denied, the valuable right of the appellant stood affected.

4. Learned Advocate appearing for the respondent submits that, by the impugned order, learned Trial Judge, modified the decree. The appeal as it stands today is an appeal from an order. Therefore, since, the appellant did not prefer an appeal from the decree where a higher amount of Court fees are payable, the appeal should not be entertained.
5. On merits, learned Advocate appearing for the respondent submits that, learned Trial Judge by the impugned order dated May 20, 2026, modified the decree dated April 30, 2025. He submits that, the suit filed by the appellant was dismissed by the decree dated April 30, 2025. Such decree erroneously recorded that, amount deposited in terms of the order dated June 15, 2011 passed in GA/324/2011 in such suit, was to be refunded.
6. Learned Advocate appearing for the respondent submits that, on discovery of such error, decree dated April 30, 2025, notwithstanding the execution proceeding filed at the behest of the appellant and contested thereof by the respondent, on legal advice,

the respondent applied for review which was allowed by the impugned order. He submits that, the fund which was lying with the respondent belongs to the depositors. The order dated June 15, 2011 merely sought to protect the fund belonging to the depositors by directing creation of fixed deposit. He points out that, such order also requires the appellant before Court to withdraw such amount only upon creation of an equal fixed deposit. He submits that, the order dated June 15, 2011 did not permit the plaintiff any part or portion of the amount lying with the respondent.

7. Learned Advocate appearing for the respondent submits that, since the appellant as the plaintiff failed to obtain any relief in the suit which revolved around such sum which was lying with the respondent and respondent holding of such sum as trustees on behalf of the depositors of the plaintiff company, the question of executing such decree dated April 30, 2025 or the respondent requiring to make over any sum to the appellant does not arise.
8. We find from the records that, plaintiff filed a suit making a money claim as against the respondent. Such suit being CS-COM/769/2024 was dismissed by the decree dated April 30, 2025.
9. During the pendency of such suit and prior to the decree of dismissal being passed therein, an interim order dated June 15, 2011 was passed in GA/324/2011. As and by way of interim measure, pending decision of the suit, the appellant was permitted

to obtain refund of a sum of Rs.8,41,500/- that remained on account of depositors of the plaintiff with the respondent, subject to the appellant executing indemnity bond in the form suggested by the respondent.

- 10.** The order dated June 15, 2011 ceased to exist on the date when, the decree dated April 30, 2025 was passed. However, in the decree dated April 30, 2025 which is a decree of dismissal of the suit filed by the appellant, a direction was issued in paragraph 16 thereof that, the appellant was at liberty to withdraw the sum of Rs.8,41,500/- along with accrued interest with the respondent pursuant to the order dated June 15, 2011 passed in GA/324/2011.
- 11.** The decree dated April 30, 2025 despite being one of dismissal of the suit of the appellant, was put into execution by the appellant. Respondent contested such execution proceeding. It is after a period of 284 days from the date of the decree that the appellant herein applied for review of the decree dated April 30, 2025 along with application for condonation of delay.
- 12.** By the impugned order, learned Trial Judge, did not allow affidavits to be filed to the application for condonation of delay, as prayed for on behalf of the appellant. Learned Trial Judge proceeded on the basis that, there was an error apparent on the face of the decree dated April 30, 2025. In the suit, no amount was deposited by the appellant in terms of the order dated June 15,

2011 for the appellant to obtain the sum of Rs.8,41,500/- along with accrued interest from the respondent.

13. Learned Trial Judge assigned the reason that, since the error was apparent on the face of the record, affidavit was not called for and, therefore, not invited.

14. On the aspect of condonation of delay, Supreme Court in **Pathapati Subba Reddy (Supra)** is of the following view:

28. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

28.1. Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

28.2. A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

28.3. The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

28.4. In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

28.5. Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various

factors such as, where there is inordinate delay, negligence and want of due diligence;

28.6. Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

28.7. Merits of the case are not required to be considered in condoning the delay; and

28.8. Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

- 15.** In the facts and circumstances of the present case, learned Trial Judge proceeded on the basis of the application for condonation of delay itself without allowing the appellant before us an opportunity to file an affidavit.
- 16.** As held in **Pathapati Subba Reddy (Supra)**, merits of the case are not required to be considered in condoning the delay. Learned Trial Judge proceeded on the basis that, there was an error apparent on the face of the record and therefore, proceeded to condone the delay without inviting affidavits.
- 17.** In our view, the appellant should be afforded an opportunity to contest the application for condonation of delay. Therefore, the impugned order is set aside.

- 18.** Appellant will file affidavit-in-opposition to the application for condonation of delay within seven days from date as prayed for. Reply, if any, within two weeks thereafter.
- 19.** Learned Trial Judge is requested to hear and dispose of the application for condonation of delay and the review proceedings, as expeditiously as possible.
- 20.** APOT/109/2026 along with connected application are disposed of, without any order as to costs.
- 21.** Court is informed that the money was withdrawn by the respondent and is presently lying deposited with the Registrar, Original Side.
- 22.** Till the disposal of the proceeding for review, Registrar will not part with the amount lying with it, without express leave of the Court being obtained for such purpose.

(DEBANGSU BASAK, J.)

- 23.** I agree.

(MD. SHABBAR RASHIDI, J.)