

OCD-1

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

**APDT/5/2026
IA NO: GA-COM/1/2026, GA-COM/2/2026**

**SABRI PROPERTIES PRIVATE LIMITED AND ORS.
VS
FROSTEEES EXPORT (INDIA) PRIVATE LIMITED**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellants : Mr. Haradhan Banerjee, Adv.
Ms. Susmita Nath, Adv.
Mr. Sital Chakraborty, Adv.
Mr. Meghnad Dutta, Adv.
Mr. Suresh Kumar Sahoo, Adv.

For Respondent : Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Sayantan Bose, Adv.
Mr. Sachetan Ghosh, Adv.
Ms. Manisha Das, Adv.

HEARD ON : 07.07.2026

DELIVERED ON : 07.07.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the defendants in a suit for recovery of money and directed against the judgment and decree dated July 26, 2024.

2. The judgment and decree dated July 26, 2024 requires the appellants to pay a sum of Rs.2 crores as principal along with the interest. Judgment and decree also imposed cost.
3. Appeal against the judgment and decree dated July 26, 2024 was filed on March 10, 2026.
4. Department reports a delay of 521 days in making and filing the appeal. GA-COM/1/2026 is an application under Section 5 of the Limitation Act, 1963 filed by the appellants.
5. Learned Advocate appearing for the appellants submits that, since, the explanation offered in GA-COM/1/2026 not being adequate, he advised to his client to file a supplementary affidavit which the appellants did.
6. Learned Advocate appearing for the appellants refers to the application for condonation of delay as also to the supplementary affidavit. He submits that, the appellant no. 3 looked after his mother-in-law who was located in Patna. Appellant no. 3 is the only person who looked after the proceedings on behalf of the legal entities which are the appellants as also on behalf of the natural persons. He submits that, the illness of the mother-in-law required the attention of the appellant no. 3. Appellant no. 3 was, therefore, unable to look after the litigation. He refers to the supplementary affidavit and submits that, the Advocate-on-record of the appellants, took steps with regard to obtaining of the certified copy of the impugned judgment and decree and also appeared in the execution proceedings. However, in the execution proceedings, an

order requiring the appellants to furnish affidavit as to assets was passed. Thereupon, the appellants became aware of such requirement on the communication made by the Advocate-on-record for the appellants.

- 7.** Learned Advocate appearing for the appellants draws the attention of the Court to the supplementary affidavit. He submits that, the mother-in-law of the appellant no. 3 expired on September 26, 2024. Cremation and other rituals took time till October 9, 2024. Appellant no. 3 was able to return to Kolkata on October 10, 2024. Appellant no. 3, however, suffered a severe injury on the spine and was advised bed rest. Appellant no. 3 was bedridden from October 10, 2024 till January 15, 2025.
- 8.** Learned Advocate appearing for the appellants submits that, the medical condition of the appellant no. 3 prevented the appellant no. 3 from attending to normal business till January, 2026.
- 9.** Referring to the averments made in the application for condonation of delay, he submits that, read with the supplementary affidavit, there are adequate explanations for the condonation of delay.
- 10.** Learned Senior Advocate appearing for the respondent submits that, the suit was filed for recovery of money lent and advanced. He submits that, the appellants as defendants perpetuated fraud on the respondent. The impugned judgment and decree proceeds on the basis of such fraud being established. So far as the condonation of delay is concerned, learned Senior Advocate

appearing for the respondent submits that, there is no explanation at all. He draws the attention to the Court to paragraph 7 of the supplementary affidavit. He submits that, the appellants claimed that the Advocate-on-record acted without instructions when applying for and obtaining the certified copy of the impugned judgment and decree. He submits that, such statements are not backed by any affidavit from the learned Advocate concerned.

- 11.** We are concerned with an appeal which is barred by limitation. The Department reports a delay of 521 days in making and filing the appeal.
- 12.** It is trite law that an application for condonation of delay is to be considered leniently. The applicant in an application under Section 5 of the Limitation Act, 1963, need not explain the delay on a day to day basis. However, such applicant is required to offer plausible explanation for the delay occurring. It is also trite law that, the leniency should not be such that, the provisions of the Limitation Act, 1963 are rendered otiose.
- 13.** If we are to take all statements made in the application for condonation of delay and the supplementary affidavit as true and correct, then, the appellants are able to explain the delay upto February 24, 2026 when, they claimed that appeal was made ready. The impugned judgment and decree is dated July 26, 2024. The appeal was filed on March 10, 2026.

14. On the explanations as obtaining in the petition and the supplementary affidavit itself, there is no explanation for the delay between the period from February 24, 2026 till March 10, 2026.
15. Applying the principles for consideration of an application for condonation of delay, to the facts and circumstances of the present case, we find that, the appellants did not explain the delay for the period from February 24, 2026 to March 10, 2026.
16. In view of the appellants not being able to explain the delay for making and filing the appeal, we are not in a position to condone the delay as prayed for on behalf of the appellants.
17. GA-COM/1/2026 is, therefore, dismissed.
18. Consequently, APDT/5/2026 along with GA-COM/2/2026 are dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

19. I agree.

(MD. SHABBAR RASHIDI, J.)