

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

CO/15/2026

Smti. Malati Mallick and Another

Vs

M/s. Sago Hotel Pvt. Ltd.

Mr. K. Sabir

... for the petitioners

July 02, 2026
[AKB]
Item No.5

This revisional application is directed against an order dated October 22, 2025 passed by the Learned District Judge in Other Appeal No. 02 of 2025 thereby rejecting the petitioners' application under Section 5 of the Limitation Act, 1963 and consequently dismissing the appeal itself. The said appeal had been preferred against a judgement and decree dated November 13, 2017 passed by the learned Civil Judge (Senior Division) Port Blair in a suit for specific performance of agreement for sale being O.S. 147 of 2013.

In view of the judgement of the Hon'ble Supreme Court in the case of **Shyam Sunder Sarma - versus - Pannalal Jaiswal** reported at **(2005) 1 SCC 436** dismissal of an application for condonation of delay under Section 5 of the Limitation Act, 1963 would be a decision in the appeal itself i.e. the appeal itself would be treated as having been dismissed.

In fact, the order dated October 22, 2025 that has been impugned in the revisional application also indicates that the appeal itself has been dismissed.

A decision rejecting an appeal on the ground of the same being presented beyond time, upon refusing to condone delay is thus a decree of dismissal of appeal which is appealable under the Code of Civil Procedure, 1908. A challenge thereto under Article 227 of the Constitution of India cannot be permitted.

CO/15/2026 is therefore not maintainable and is accordingly dismissed.

The petitioners shall be entitled to take back the certified copy of the impugned order upon furnishing a Photostat copy thereof duly countersigned by the Learned Advocate on record for the petitioner. It is needless to mention that for the purpose of computing limitation the petitioners shall be at liberty to pray for exclusion of the period during which the revisional application remained pending before this Court, in case they seek to challenge the order impugned herein before the appropriate appellate forum.

(Om Narayan Rai, J.)