

**HIGH COURT OF TRIPURA
AGARTALA**

IA No.1 of 2025 in RFA 4 of 2025

Shri Prantosh Biswas and others

.....Applicant(s)

Vs.

Shri Swapan Saha

..... Respondent(s)

For Applicant(s) : Mr. Pradhyut Kumar Dhar, Sr. Advocate
Mr. Jahirul Islam, Advocate
Ms. Priya Saha, Advocate
Mr. Rahul Debnath, Advocate

For Respondent(s) : Mr. Bibhal Nandi Majumder, Sr. Advocate
Mr. Dhruva Jyoti Saha, Advocate
Mr. Rajib Saha, Advocate
Mr. Rounak Chakraborty, Advocate
Mr. Samrat Sarkar, Advocate
Mr. Eleembrak Debbarma, Advocate

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR JUSTICE BISWAJIT PALIT**

ORDER

25.06.2025

Heard learned counsel for the respective parties.

[2] This application has been filed under Order XLI Rule 3A of the Civil Procedure Code read with Section 5 of the Limitation Act for condoning delay 1089 days in filing the appeal.

[3] It is contended on behalf of the applicant that learned trial court passed judgment and order dated 07.02.2020 and decree thereunder in Money Suit No.41 of 2019 and subsequently, by order dated 10.02.2020 corrected the said judgment dated 07.02.2020. Thereafter, the defendant appellants instructed their learned advocate to prefer appeal and handed over necessary papers. It had been informed to them that the said learned advocate prepared the appeal and subsequently their appeal was filed.

[4] It is further contended that the said learned advocate could not come in Court due to spread of COVID-19 for a reasonable time and he actually forgotten about the case as he thought that appeal was filed by him but, actually, no appeal was filed which was subsequently came to the knowledge of the defendant appellants only on 10.03.2025. Thereafter, a bitter relation was created amongst the defendant appellants and their learned advocate. Subsequently, the defendant appellants (applicants herein) made contact with Mr. P.K. Dhar, learned senior counsel along with their learned counsel and thereafter, memo of appeal was drafted along with the application for condonation of delay etc.

[5] Mr. P.K. Dhar, learned senior counsel assisted by Mr. R. Debnath, learned counsel submits that the entire delay took place due to mistake of the learned advocate who forgotten the matter and due to mistake of a lawyer, a party should not suffer. Therefore, he urges this Court to condone the delay in preferring the appeal.

[6] On the other hand, Mr. Rajib Saha, learned counsel appearing for the respondent vehemently opposes the submission made by the learned senior counsel on behalf of the applicants. He submits that the statement made on behalf of the applicants that the mistake committed in not preferring the appeal in time came to the knowledge of the applicants only on 10.03.2025 is clearly an afterthought and contrary to record, aimed solely at creating an illusion of sufficient cause. It is also contended that ignorance of the status of one's own litigation, particularly when one is actively participating in related proceedings, cannot constitute a valid explanation under Section 5 of the Limitation Act. He, therefore, urges this Court to dismiss the present application for condoning the delay along with the appeal that has been preferred after a long inordinate delay.

[7] Heard the submissions made at the Bar. Perused the record. Affidavit-in-opposition has also been filed on behalf of the respondent on 24.06.2025.

[8] It is observed by this Court that the reason for long delay of 1089 days in filing the appeal, has mainly explained by the applicant in the instant application at paragraph-8, and in reply, the respondent has opposed the same in the paragraph-10 of the affidavit-in-opposition filed on 24.06.2025. In this regard, the relevant contents from the present application and the affidavit-in-opposition filed on behalf of the respondent are extracted as under:

Paragraph-8 of the instant application:

"8. That, in fact, said Learned Advocate Mr. J. Islam could not come in Court due to spread of Covid-19 for a reasonable time and he actually forgotten about the case and he thought that appeal was filed by him but in fact no appeal was filed which was subsequently came to the knowledge of the Defendant Appellants only on 10.03.2025 and thereafter, bitter relation was created amongst the Defendant Appellants and their Learned Advocate."

Paragraph-10 of the affidavit-in-opposition dated 24.06.2025:

"10. In regard to the statements made in paragraph No. 8 of the instant application, the answering respondent most respectfully submits that the appellants' statement that the mistake came to light only on 10.03.2025 is clearly an afterthought and contrary to record, aimed solely at creating an illusion of sufficient cause. Hon'ble Courts have consistently held that ignorance of the status of one's own litigation, particularly when one is actively participating in related proceedings, cannot constitute a valid explanation under Section 5 of the Limitation Act.

10.1. It is humbly submitted that the plea taken by the appellants regarding the alleged inability of their engaged learned counsel to appear before the Court due to the spread of COVID-19, and his subsequent forgetfulness about the case, is a deliberate misrepresentation of facts and not a bona fide explanation. The assertion that the counsel mistakenly believed that the appeal had already been filed is highly improbable and inconsistent with the professional responsibilities of an Advocate. Such a statement is plainly misleading, as it seeks to portray a casual lapse as an innocent mistake, while

in reality, it is an evasive tactic employed to justify the inordinate delay without any valid or sufficient cause.

The assertion that the learned advocate believed the appeal was already filed is also entirely baseless and legally unsustainable. An appeal is a formal legal process that involves verified pleadings and docketing before the registry. The filing of an appeal cannot be presumed or assumed casually by any litigant, much less by a practicing counsel.

10.2. It is further submitted here that the appellant's narrative conveniently ignores material facts that contradict the claimed ignorance. It is an admitted and undisputed position that the respondent-plaintiff had initiated execution proceedings in the competent Ld. Court for execution of the decree in the month of February, 2021 i.e. on 03.02.2021 and the same has been registered and numbered as Case No. Ex. (M) 01 of 2021. This clearly shows that the respondent decree-holder was actively pursuing legal recourse to enforce the decree well before the appellants claim to have become aware of the case status. Moreover, the respondent had taken active steps to execute the decree, and the appellants were not only fully aware of such steps but took extraordinary measures to resist it. This reinforces the conclusion that the appellants were not under any genuine misconception or mistaken belief.

A copy of the execution application having Case No. Ex. (M) 01 of 2021, is annexed herewith and marked as ANNEXURE -1.

10.3. Crucially, on 12.04.2021, the very same Learned Advocate who now claims to have forgotten about the appeal entered appearance on behalf of all the appellants in the execution proceedings and continued to actively represent them during the course of the execution. The records of the execution case will confirm that he filed a memo of appearance and regularly participated in the proceedings up to 17.05.2022. This sequence of events not only shows the appellants' active participation in related proceedings but also completely contradicts the plea of ignorance or mistaken belief regarding the filing of the appeal.

Copies of the order dated 12.04.2021 and 17.05.2022, are annexed herewith and marked as ANNEXURE - 2.

10.4. The foregoing facts incontrovertibly prove that the appellants and their counsel were fully aware of the judgment and decree and its legal implications within a few months of its pronouncement. The excuse of "forgetfulness" or having believed that the appeal had already been filed is a fabricated and afterthought explanation, offered solely to overcome the fatal bar of limitation. In light of the documented conduct of the appellants and their counsel in the execution case, such a plea cannot be accepted as either genuine or credible.

10.5. It is, therefore, most respectfully submitted that the explanation furnished by the appellants is false, concocted, and not backed by any documentary evidence or affidavit from the concerned counsel. The application is devoid of any material particulars and lacks bona fides. Such a vague, evasive, and unsubstantiated explanation for a delay of 1089 days falls far short of the requirements under Section 5 of the Limitation Act, which mandates that "sufficient cause" must be shown for each day's delay. Accordingly, this Hon'ble Court may be pleased to reject the condonation application as abuse of process and devoid of merit.

10.6. Furthermore, the conduct of the appellants during the execution proceeding clearly establishes not only their awareness of the decree but also their active and deliberate attempts to obstruct its lawful execution. It is a matter of record that, pursuant to the orders and directions of the Learned Executing Court, bailiffs were deputed to various premises associated with the appellants for the purpose of executing the decree by way of attachment of their properties. During such proceedings, the appellants, in a clear attempt to prevent attachment, paid sums of ₹7,000/- and ₹6,000/- to the bailiffs with the intent to deter them from executing the attachment. Significantly, the appellants themselves filed an application on 21.03.2025 before the Learned Executing Court narrating the entire incident and expressly admitting that such payments were made by the appellants. In the said application, the appellants further prayed for an order permitting them to cross-examine the concerned bailiffs, thereby affirming their full knowledge of the proceedings and their conscious participation therein.

It is stated here that in the said application, the appellants not only admitted to such mischief act of payments of money to the bailiffs but also prayed for permission to cross-examine the concerned bailiffs. This act alone demolishes the claim that the appellants were unaware of the status of the case or the fact that no appeal had been filed. On the contrary, it reveals their awareness and involvement in resisting the execution of the decree.

A copy of the application dated 21.03.2025, is annexed herewith and marked as ANNEXURE - 3.

10.7 It is also a matter of record that the appellants had appeared in the execution proceeding from 21.04.2021 to 17.05.2022 through their duly engaged Ld. Advocate, who filed appearance and made submissions on their behalf on multiple occasions. It is pertinent to mention here that the appellants not only appeared in the execution proceeding pending before the Ld. Executing Court but also filed an objection under section 47 of the Code of Civil Procedure which was registered separately and numbered as Case No. CM. (J) 99 of 2021 and the same was disposed of by pronouncement of final order dated 02.05.2022, passed by the Ld. Executing Court.

Copy of the objection under section 47 CPC, is. annexed herewith and marked as ANNEXURE - 4.

Copy of the final order dated 02.05.2022, passed in Case No. CM. (J) 99 of 2021, is annexed herewith and marked as ANNEXURE-5.

10.8. However, thereafter subsequent to the date of 17.05.2022, the appellants voluntarily refrained from participating in the execution proceeding and deliberately chose not to comply with or respond to the several directions issued by the Learned Executing Court. Such conduct amounts to willful disobedience of judicial orders and reflects a clear attempt to delay and frustrate the execution of a lawful decree.

10.9. This sequence of facts not only exposes the falsehood of the appellants' plea of ignorance or inadvertence regarding the decree or appeal status, but also reflects a calculated misuse of the judicial process, thereby disentitling them to the equitable relief of condonation under Section 5 of the Limitation Act...."

[9] Upon hearing the learned counsel appearing for the parties and on perusal of averments made in the accompanying affidavit more particularly, in paragraph-8 of the present appeal and paragraph-10 of the affidavit-in-opposition filed by the respondent as quoted above, this Court finds that the judgment and decree was passed by the trial Court on 07.02.2020 and the same was corrected on 10.02.2020. Thereafter, respondent-plaintiff initiated execution proceedings in the competent learned Court for execution of the decree on 03.02.2021 and the same was registered and numbered as Case No. EX. (M) 01 of 2021. It is reflected in the order 12.04.2021 passed the EX. (M) 01 of 2021 that Mr. J. Islam for the judgment debtors no.2, 3 & 4 (who now claims to have forgotten about the appeal) entered his appearance in the execution proceedings. The order dated 17.05.2022 passed in the said execution proceeding also shows the active representation of the said learned counsel on behalf of the judgment debtors No.2, 3 & 4 (appellant-applicants herein) during the course of execution.

In view of the above, this Court feels that the grounds which the learned counsel for the applicants has placed, is not sufficient enough to allow

the present application for condoning the inordinate long delay of 1089 days.
Hence the same is dismissed.

Accordingly, this interlocutory application stands dismissed and the same is disposed of. Resultantly, the connected appeal i.e. RFA 4 of 2025 shall also stand dismissed.

Biswajit Palit, J.

Dr. T. Amarnath Goud, J.

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