

**HIGH COURT OF TRIPURA
AGARTALA**

**IA No.01/2025 in CRP No.97 of 2024
CRP No.97 of 2024**

Sri Shyamal Banik & another

.....Applicant/Petitioner(s);

Versus

Sri Dwijen Banik & others

.....Respondent(s).

For Applicant/Petitioner(s) : Mr. Debesh Chandra Roy, Advocate.

For Respondent(s) : Ms. Nabanita Roy, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

07/04/2025

IA No.01/2025 in CRP No.97 of 2024

Notice.

Since learned counsel Ms. Nabanita Roy has entered appearance on behalf of the proposed legal heirs of the deceased respondent No.4 i.e. respondent No.4(a)-Sri Narayan Chandra Banik, respondent No.4(b)-Smt. Mithu Banik and respondent No.4(c)-Smt. Susmita Banik (Barik), notice is waived.

According to the petitioners, respondent No.4 has died on 15.01.2025. Petitioners came to know of it only on return of unserved notice.

Let substitution be carried out in the array of respondents by learned counsel for the petitioners during course of the day in red ink in the main petition.

IA stands disposed of.

CRP No.97 of 2024

Heard learned counsel for the petitioners Mr. Debesh Chandra Roy and learned counsel for all the respondents Ms. Nabanita Roy.

The simple case of the petitioners is that T.S. (Partition) 110 of 2018 was dismissed for default on 14.02.2022. After obtaining the certified copy, the restoration petition was filed on 22.03.2022. According to the petitioner, there was no delay in filing the restoration petition. However by impugned order dated 15.04.2024, the learned Trial Court of Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala has dismissed the C.M. (Resto) 06 of 2022 as according to it, the application was not filed within the limitation period of 30 days. Learned counsel for the petitioners submits that delay, if any, was only of five days, even as per the calculation of the learned Court. In such circumstances, dismissal of a partition suit which effectively would decide the subsisting *lis* between both the sides for non-prosecution would cause miscarriage of justice. The delay, if any, is also not inordinate. The learned Court has, therefore, not exercised its discretion in a judicious manner. Therefore, the impugned order may be set aside and the suit may be restored.

Learned counsel for the respondents Ms. Nabanita Roy does not object to the prayer.

I have taken into account the aforesaid facts and circumstances and gone through the impugned order also. Delay, if any, even as per the calculation of the learned Trial Court from the date next to the dismissal of T.S. (Partition) 110 of 2018 was neither inordinate nor unexplained since the restoration petition was filed on 22.03.2022. Petitioners had taken a plea that some time was consumed in obtaining the certified copy of the order. Procedural law is the handmaiden of justice. In such circumstances, if the suit is not restored, it would lead to miscarriage of justice. Therefore, the impugned order is set aside. Let T.S. (Partition) 110 of 2018 be restored to its original record subject to

deposit of cost of Rs.2,000/- in the District Legal Services Authority, West Tripura, Agartala within a period of two weeks.

Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ



Pijush/

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