

**HIGH COURT OF TRIPURA
AGARTALA**

**I.A. No.01 of 2025
In RSA No.41 of 2025**

1.(a) Md. Babur Miah

1.(b) Md.Tahir Miah

1.(c) Md. Mastu Miah

1.(d) Md. Alamin Miah

All are sons of Late Siddique Miah,

1.(e) Smt. Noor Jahan Begam

W/O- Md. Abu Kalam,

D/O- Late Siddique Miah,

1(f) Smt. Khulshum Begam

D/O. Late Siddique Miah,

7.Abu Begam

W/O- Abu Jamal Khan

D/O- Late Siddique Miah

All are daughters of Late Siddique Miah,

After death of Siddique Miah all are legal heirs of Siddique Miah
@ Siddik Miya, as named above.

All are residents of Gajaria, Near BSF Camp,

P.O.-Sarba Dharma Mission, P.S.-AD Nagar, District- West
Tripura, Pin-799003.

8.Md. Sahid Miah

S/O- Late Abdul Khalek,

R/O- Gajaria, Near BSF Camp,

P.O.- Sarba Dharma Mission, P.S.- AD Nagar,

District- West Tripura, Pin-799003

Applicant-appellants.....

VERSUS

1.Tajul Islam,

S/O. Late Abdul Barek Munshi.

2. Master Meheraj Begam,

W/O. Late Khurshed Miah.

3. Md. Mamum Miah,
S/O/ Late Khurshed Miah.

4. Md. Suman Miah,
S/O. Khurshed Miah.

5. Md. Bacchu Miah,
S/O. Late Khurshed Miah.

All are R/O. Gajaria, Near BSF Camp, P.O.- Sarba Dharma Mission, P.S.-AD Nagar, District- West Tripura, Pin-799003.

6. Mst. Rahela Begam,
W/O. Md. Abdul Rehman
R/O. Indranagar, Near Masjid, P.S.- East Agartala,
District- West Tripura.

.....Respondents.

For Applicant(s)	:	Mr. Ratan Datta, Adv, Mr. Rakesh Debnath, Adv.
For Respondent(s)	:	Mr. Asim Kumar Deb, Adv.
Date of hearing	:	19.06.2026
Date of delivery of Judgment & Order	:	24.06.2026
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This application under Section 5 of the Limitation Act, 1963 is filed for condoning the delay of 1117 days in preferring the appeal against the judgment and order dated 19.03.2021 and the consequential decree thereof passed by Learned District Judge, West Tripura, Agartala, in T.A. No.43 of 2017 arising out of the judgment dated 24.05.2017 delivered by Learned Civil Judge (Senior Division), Court No.2 in connection with case No.T.S. No.58 of 2013.

02. Heard Learned Counsel, Mr. R. Datta appearing on behalf of the applicant-appellants and also heard Learned Counsel, Mr. A. K. Deb appearing on behalf of the respondent Nos.1 to 4 & 6. The said respondents have filed their counter-affidavit-in-opposition.

03. Taking part in the hearing, Learned Counsel for the applicant-appellants submitted that the present applicant-appellants have preferred this appeal against the judgment and order dated 19.03.2021 and decree dated 31.03.2021 passed by Learned District Judge, West Tripura, Agartala in connection with case No.T.A. No.43 of 2017 and in preferring the appeal there was a delay of 1117 days. It was further submitted that the impugned judgment was passed on 19.03.2021 and the decree was signed on 31.03.2021 and the statutory period of appeal was 90 days, i.e. on or before 17.06.2021 but the same could not be filed. It was also submitted that the original defendant in T.S.No.58 of 2013 was seriously ill during the pendency of the Title Appeal due to his old age and was bed ridden since 2021 and his family members and survivors were engaged in taking care of him, as such they could not pursue anything about the Title Appeal No.43 of 2017 and they were unaware about the fact of passing judgment in T.A. No.43 of 2017.

It was further submitted that on 19.07.2022 the original defendant, Siddik Miya died leaving behind the present

applicants, 1(a) to 1(g) as his survivors as per the survival certificate and being ignorant of law they could not take any step and finally, they have preferred the appeal with this present application for condonation of delay.

03. The contesting respondents have filed their objection and submitted that this application was not maintainable.

Further, it was submitted that since the decree-holders did not file any execution case bearing No.Execution (T) No.41 of 2022 for execution of the judgment dated 19.01.2021 in T.A. No.43 of 2017 within three years. So, the applicants have not preferred the present second appeal. By the objection the contesting O.P.s prayed for dismissal of the appeal filed. However, at the time of hearing, Learned Counsel for the applicants, Mr. Datta relied upon one citation of the Hon'ble Supreme Court of India reported in **Inder Singh v. The State of Madhya Pradesh** passed on 21.03.2025 in SPL (Civil) No.6145 of 2024, wherein in para No.14, Hon'ble the Apex Court observed as under:

"14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation."

He also relied upon another citation reported in **Collector, Land Acquisition, Anantnag & Anr. v. Mst.**

Katiji & Ors. reported in **AIR 1987 SC 1353** which was against the judgment and order dated 14.04.1986 of the Jammu & Kashmir High Court in Civil 1st Appeal No.54 of 1985 wherein in the relevant portion of para No.3, Hon'ble the Apex Court observed as under:

"3.

"1. *** *** ***

2. *** *** ***

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

*** *** ***"

Learned Counsel also relied upon another citation of the Hon'ble Apex Court in In **Ram Sumiran & Ors. v. D.D.C. & Ors.** reported in **(2020) 9 SCC 636**, wherein Hon'ble the Apex Court observed as under:

"The only ground on which the High Court has dismissed the writ petition is that it has abated as a whole against Respondents 4 and 5 since it

abated against Respondent 5 on account of the legal representatives of Respondent 5 not having been brought on record within a period of 90 days after the death of Respondent 5 which occurred on November 21, 1976. It is true that no steps were taken by the appellants for bringing the legal representatives of the deceased Respondent 5 on record for about 6 years even though according to Respondent 4 the appellants knew about the death of Respondent 5. But merely because no application was made by the appellants for bringing the legal representatives of the deceased Respondent 5 on record we do not think that in the circumstances of the present case that would be a valid ground for refusing to grant the application of the appellants for setting aside the abatement and bringing the legal representatives of the deceased Respondent 5 on record because the appellants are admittedly from the rural area and in a country like ours where there is so much poverty, ignorance and illiteracy, it would not be fair to presume that everyone knows that on death of a respondent, the legal representatives have to be brought on record within a certain time. The ends of justice require that the application for bringing the legal representatives of the deceased Respondent 5 should have been granted. We accordingly allow the appeal, set aside the order of the High Court and direct that the abatement, if any, shall be set aside and the legal representatives of deceased Respondent 5 shall be brought on record and the writ petition shall be remanded to the High Court for disposal according to law. We may make it clear that in making this order we must not be presumed to have expressed any opinion on the merits of the controversy raised in the writ petition. It will be for the High Court to decide the writ petition according to law. We would request the High Court to dispose of the writ petition at a very early date and as far as possible, before the end of February 1985. The ex parte order of stay made by us will stand vacated."

Referring the same Learned Counsel for the applicant-petitioners submitted that the present petition is supported by the aforesaid judgments.

On the other hand, Learned Counsel for the respondents relied upon the judgment in **Maya Bhowmik v. Jitendra Kumar Shil** reported in **(2016) 2 TLR 878**, wherein in para No.11, this High Court observed as under:

"11. It is a settled position of law that the expression "sufficient cause" in Section 5 must receive liberal construction so as to advance substantive justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to a party seeking condonation of the delay. The period of delay does not matter, but what matters is the reason for which the delay is caused."

Referring the same, Learn Counsel drawn the attention of the Court that "sufficient cause" has not been explained by the petitioners/applicants in the application for which the same needs to be dismissed.

04. Heard both the parties at length and perused the application for condonation of delay. It is the settled position of law that in a case of this nature, it is the duty of the applicant to explain everyday's delay. Here in the case at hand the judgment of the 1st Appellate Court was passed on 19.03.2021 in T.A. No.43 of 2017 and the same was decreed on 31.03.2021. The present applicants have asserted that the original defendant was suffering from illness and was bed ridden and his legal heirs were engaged in taking care of him and finally, on 19.07.2022 said Siddik Miya died leaving behind the present petitioners as successors and for ignorance of law they could not prefer the appeal within time. Except these grounds no other materials could be produced by the aforesaid applicants. Eeven no documentary evidence was adduced by the present applicants in support of illness of said Siddik Miya i.e. the original defendant of T.S. 58 of 2013. Furthermore, in the application for condonation of delay the present applicants have not explained the day to day delay in filing the application

save and except some omnibus statements. The citations referred by the applicants in support of their application does not help this Court at this stage to condone the delay as prayed for and furthermore, at this stage, I do not find any scope to consider the merit of the appeal as raised by Learned Counsel for the applicant at the time of hearing.

However, in **Thirunagalingam v. Lingeswaran & Anr.** reported in **2025 SCC OnLine SC 1093**, at para Nos.31 and 32, Hon'ble the Supreme Court observed as under:

"31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet."

(emphasis supplied)

In **H. Guruswamy & Ors. v. A. Krishnaiah since deceased by Lrs.** reported in **2025 SCC OnLine SC 54**, at para Nos.16 and 17, Hon'ble the Supreme Court observed as under:

"16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears

that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

05. It is the settled position that limitation is based on public policy and the principle of equity. The power under Section 5 of the Limitation Act, 1963 is a discretionary power and it may not be exercised if the delay is attributed to the elements of negligence, carelessness and lack of due diligence on the part of the appellant/applicant.

Here in the case at hand, after hearing both the sides, it appears to us that there was no due diligence on the part of applicants in filing the application and furthermore, on considering the materials on record, I am not satisfied with the explanations offered by the present applicant-appellants for condoning delay of 1117 days in preferring the connected appeal. Accordingly, the application for condonation of delay filed by the applicants stand rejected being devoid of merit.

Consequently, the appeal filed also stands dismissed.

Send down the record(s), if any, to the Learned Trial Court along with a copy of this order.

With these observation, this present application stands disposed of.

Pending application(s), if any, also stands disposed of.

JUDGE

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