

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.44/2025

Askir Ali, S/O. Late Achaddar Ali, resident of Yeazekhowra, P.O.-Babur Bazar, P.S.- Irani (earliar, P.S.-Kailashahar), District-Unakoti Tripura.
..... Appellant(s).

V E R S U S

1. Mabaswir Ali, Husband of late Karibunnessa, resident of Irani, Kailashahar, P.O.- Irani Bazar, P.S.- Irani, District-Unakoti Tripura.
2. Mafik Ali, S/O. Late Karibunnessa & Mabaswir Ali, resident of Irani, Kailashahar, P.O.- Irani Bazar, P.S.- Irani, District-Unakoti Tripura.
3. Rabeya Begam, D/O. Late Karibunnessa and Mabaswir Ali, resident of Irani, Kailashahar, P.O.- Irani Bazar, P.S.-Irani, District-Unakoti Tripura.
4. Mujib Ali, S/O. Late Karibunnessa and Mabaswir Ali, resident of Irani, Kailashahar, P.O.-Irani Bazar, P.S.-Irani, District-Unakoti Tripura.
5. Motahir Ali alias Matassir Ali, S/O. Late Karibunnessa and Mabaswir Ali, resident of Irani, Kailashahar, P.O.-Irani Bazar, P.S.-Irani, District-Unakoti Tripura, presently at-Qatar, Middle East Asia.
.....Respondent(s).

Along with

CRP No.01/2026

Askir Ali, S/O. Late Achaddar Ali, resident of Yeazekhowra, P.O.-Babur Bazar, P.S.- Irani (earliar, P.S.-Kailashahar), District-Unakoti Tripura.
..... Petitioner(s).

V E R S U S

1. Mabaswir Ali, Husband of late Karibunnessa, resident of Irani, Kailashahar, P.O.- Irani Bazar, P.S.- Irani, District-Unakoti Tripura.
2. Mafik Ali, S/O. Late Karibunnessa & Mabaswir Ali, resident of Irani, Kailashahar, P.O.- Irani Bazar, P.S.- Irani, District-Unakoti Tripura.
3. Rabeya Begam, D/O. Late Karibunnessa and Mabaswir Ali, resident of Irani, Kailashahar, P.O.- Irani Bazar, P.S.-Irani, District-Unakoti Tripura.
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5. Motahir Ali alias Matassir Ali, S/O. Late Karibunnessa and Mabaswir Ali, resident of Irani, Kailashahar, P.O.-Irani Bazar, P.S.-Irani, District-Unakoti Tripura, presently at-Qatar, Middle East Asia.
.....Respondent(s).

For Appellant/Petitioner(s)	: Mr. Sankar Lodh, Advocate, Mr. Kishalay Roy, Advocate, Mr. Subham Majumder, Advocate.
For Respondent(s)	: Mr. Bibek Banerjee, Advocate, Ms. Ruma Majumder, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

Date of hearing & judgment : **30.01.2026.**

Whether fit for reporting : **YES.**

COMMON JUDGMENT & ORDER (ORAL)

Heard Mr. Sankar Lodh, counsel appearing for the appellant/petitioner and Mr. Bibek Banerjee, counsel appearing for the respondents.

2. The appellant in this Second Appeal as well as the petitioner in the CRP is the principal defendant (for short 'the petitioner') in Title Suit No.16 of 2015 on the file of the Civil Judge (Junior Division), Kailashahar, Unakoti District.

3. The respondents No.1, 2 & 3 in the RSA as well as in the CRP (for short 'the respondents 1 to 3') had filed the said suit for a declaration of their right, title and interest in the suit schedule property and for a perpetual injunction restraining the petitioner from interfering with their possession of the suit schedule property.

4. There was also a counter claim by the petitioner in the same suit.

5. After contest, the suit was dismissed on 21.12.2024. The trial Court, while considering the counter claim, granted a mandatory injunction in favour of the petitioner and directed the respondents No.1, 2 & 3 to vacate the construction made over the suit schedule land. It thus partly decreed the counter claim in favour of the petitioner. However, to the extent the petitioner claimed declaration that they were possessing the suit land adversely since 03.03.1999, the said relief was denied by the trial Court.

6. The respondents No.1, 2 & 3 did not file any appeal against the judgment of the trial Court.

7. But the petitioner filed Title Appeal No.15 of 2025 before the District Judge, Unakoti Judicial District, Kailashahar, Tripura along with a Civil Misc.(Condonation) Application No.13 of 2025 to condone the delay of 59 days in filing the said appeal.

8. In the application seeking condonation of delay filed under Section 5 of the Limitation Act, the petitioner contended that the judgment of the trial Court was rendered on 21.12.2024 and the decree therein was drafted on 03.01.2025. He stated that application for obtaining certified copies of the judgment and decree was made on 13.01.2025 and they were given to the petitioner on 06.02.2025, but on account of illness, he could not file the Appeal within the period of 30 days prescribed by law and presented the same on 08.05.2025. Thus, the delay in filing the appeal occurred and it is required to be condoned. He had also filed prescriptions from certain Doctors who advised him during the relevant period to take bed rest from time to time.

9. This application was opposed by the respondents No.1, 2 & 3 who alleged that there is no proper day to day explanation for condonation of delay and so the application should be dismissed. They also alleged that the plea of the petitioner that he could not contact his lawyer on account of his illness is a concocted and false story.

The order of the District Judge:

10. By order dt.01.09.2025, Civil Misc.(Condonation) No.13 of 2025 was dismissed by the District Judge, Unakoti District, Kailashahar holding that there is a delay of 100 days in filing the appeal and not 59 days.

11. In the said order, the District Judge held that though the judgment of the trial Court was pronounced on 21.12.2024 and the decree was prepared

on 03.01.2025, the delay of 10 days till 13.01.2025 for filing application seeking certified copy of the same was not explained by petitioner. He also held that even though the certified copy was ready on 01.02.2025, the petitioner received it on 06.02.2025 and did not explain the delay of 4 days in taking the same.

12. He then referred to the prescriptions of Doctors produced by the petitioner and held that those prescriptions indicated that the petitioner was only asked to take rest, that it was only an advice and he did not establish that he was in a condition which required complete rest. He also held that the prescriptions were not duly certified. He therefore held that there was nothing on the part of the petitioner to show that he was not in a position to take lawful steps for filing the appeal as required.

13. He also noted that according to the plea of the petitioner, he had gone to Guwahati for personal reasons, that for presentation of the appeal, physical appearance of the petitioner was not necessary and all that he needed to do was to engage a lawyer who could have prepared the memo of appeal and filed it in the Court along with the certified copy of the judgment; that the petitioner could not do even the simple thing for the period of 100 days. He also criticized the application for condonation of delay stating that it was made in a mechanical manner.

14. Having dismissed the application Civil Misc.(Condonation) Application No.13 of 2025 for condonation of delay, a consequential order was passed on 01.09.2025 in T.A. No.15 of 2025 dropping the appeal and disposing it as uncontested in view of the said order passed in the delay condonation petition.

15. Challenging the order dt.01.09.2025 in Civil Misc.(Condonation) No.13 of 2025, the petitioner filed CRP No.01 of 2026 under Article 227 of the Constitution of India and challenging the decree dt.01.09.2025 dismissing the T.A. No.15 of 2025, he filed RSA No.44 of 2025.

16. At the outset, counsel for the respondents No.1, 2 & 3 sought to contend that against the order dismissing the application for condonation of delay, a Revision under Article 227 of the Constitution does not lie and the said order is also appealable.

17. Counsel for the respondents No.1, 2 & 3 had cited the judgment of Agartala Bench of the Gauhati High Court in the case of ***Union of India & others v. Ved Prakash Srivastava***¹ and another judgment of the Tripura High Court in the case of ***Maran Chandra Shil and Ors. v. Smt. Laxmi Rani Chowdhury & another***².

18. This contention is refuted by the counsel for the appellant/petitioner.

19. In the judgment in ***Ved Prakash Srivastava*** (1 supra), a Revision under Section 115 of the CPC was filed against an order passed by the District Judge, West Tripura, Agartala on 02.05.1995 in Title Appeal No.79 of 1994 whereby the District Judge dismissed the application for condonation of delay in presenting the memo of appeal and also the appeal itself.

A view was expressed in the said judgment that no revision which would lie against the said order and that the order dismissing the appeal can be challenged in Second Appeal because it is an appeal against an order of rejection of plaint by way of an appeal under Section 107(2) of CPC.

¹ (1998) 3 GLR 176

² AIR 2014 TRIPURA 36

20. In my opinion, the learned Judge who decided the said case ought to have noticed that though a common order was pronounced in that case rejecting the application for condonation of delay and also dismissing the appeal, the order dismissing the appeal, being a decree, an appeal would lie under Section 100 CPC against it.

21. But as regards the order rejecting the application for condonation of delay, the said order is not a judgment or decree and, therefore, no appeal lies against the same under Section 100 CPC. Consequently, in 1998 (when the said decision was given) when the Civil Procedure Code, 1908 had not been amended and the amendment happened only in 2002 vide Code of Civil Procedure (Amendment) Act, 2002, a revision under Section 115 of CPC could have been maintained against the order dismissing an application for condonation of delay in presenting the appeal, and a Second Appeal would lie against the consequential decree and judgment in the First Appeal dismissing the First Appeal.

22. The learned Single Judge erred in holding that only an appeal lies against both orders, i.e. the order dismissing the application for condonation of delay *and* the order consequently dismissing the First Appeal.

23. The learned Single Judge ought to have noticed that though in that case a common order was passed by the District Judge for both the application for condonation of delay and the First Appeal, as far as the petitioner therein was concerned, there were in fact two different remedies- one of Revision under Section 115 CPC against the order rejecting the application for condonation of delay and the other a Second Appeal against the order dismissing the First Appeal.

24. Therefore, in my opinion, the said decision does not lay down a correct principle of law that only a Second Appeal lies against an order dismissing an application for condonation of delay and that a Revision cannot lie under Section 115 of CPC. To the extent the said judgment held that an appeal lies against the decree dismissing the First Appeal under Section 100 CPC, however, the said judgment is correct.

25. In **Maran Chandra Shil** (2 supra) also an application under Article 227 of the Constitution of India was filed challenging an order passed by the District Judge, South Tripura, Udaipur in Civil Misc. Case No.27 of 2004 whereby the District Judge had rejected the application made under Section 5 of the Limitation Act, 1963 for condonation of delay of 82 days in preferring the appeal and consequently dismissed the First Appeal preferred against the judgment and decree of the trial Court. In that case also, there was a single order passed on 21.09.2004 dealing with both the application for condonation of delay in filing the First Appeal and also deciding the appeal. In para-22, the learned Single Judge held as under:

*"22. So, according to this Court, dismissal of an application for condonation of delay and consequent thereto dismissal of appeal is a decree and against such a decree a second appeal lies. When the statute prescribed an appeal against the said decree then a petition under Article 227 of the Constitution is not permissible. The aforesaid view of this Court gets support from the decision of the Apex Court in **Miss Maneck Custodji Surjarji V Sarafazali Nawabali Mirza, AIR 1976 SC 2446** wherein the Apex Court while considering the order passed by the Bombay High Court disposing a Special Civil Application exercising its jurisdiction under Article 227 of the Constitution, noted inter alia, that :*

“it is very difficult to appreciate the reasoning behind the order made by the High Court. It is to say the least an extraordinary order which flies in the face of law and judicial procedure. The respondent had clearly a legal remedy available to him by way of an appeal against the decree of the City Civil court and this remedy was not only adequate but more comprehensive than the one under Art. 227 of the Constitution. Even so, for some inexplicable reasons, the respondent chose to prefer a Special Civil Application under Art. 227 of the Constitution and Vaidya, J., entertained the Special Civil application and granted relief to the respondent casting to the winds the well-settled principle that the High Court does not ordinarily, in exercise of its discretion, entertain a special civil application under Art. 227 of the Constitution where an adequate alternative legal remedy is available to the applicant. It is true that this principle is not rigid and inflexible and there can be extraordinary circumstances where despite the existence of an alternative legal remedy, the High Court may interfere in favour of an applicant, but this was certainly not one of such extraordinary cases. It is indeed difficult to see how the learned Judge could entertain a Special Civil Application against a decree passed by a subordinate court when the procedural law allows an appeal against it and that appeal lies to the High Court itself. It must be realized that the jurisdiction under Art. 227 of the Constitution is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and

unrestricted power to the High Court to do whatever it liked.”

As the High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions, it must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes.”

26. To the extent the learned Single Judge in that case held that where the statute prescribes an appeal against the decree, a petition under Article 227 of the Constitution was not permissible and that against the dismissal of the First appeal, which is a decree, a Second Appeal would lie, he is undoubtedly correct.

27. But to hold that an order dismissing an application for condonation of delay is also appealable, is not correct.

28. Again the learned Single Judge in that case seems to lose sight of the fact that though it was a common order, it dealt with both the application for condonation of delay and the appeal itself.

29. To the extent the District Judge had dismissed the application for condonation of delay, no appeal is provided in the Civil Procedure Code. Therefore, challenge to the said order rejecting the application for condonation of delay can only be under Article 227 of the Constitution of India in view of the amendment made to the CPC in 2002 restricting the scope of Section 115 CPC.

30. Therefore, in that case also, there ought to have been an RSA under Section 100 CPC against the dismissal of the First Appeal by the First Appellate Court and a Revision under Article 227 of the Constitution of India

insofar as the District Court had rejected the application for condonation of delay.

31. Therefore, for the same reason both the judgment in *Ved Prakash Srivastava* (1 supra) and the judgment in *Maran Chandra Shil & others* (2 supra) to the extent they held that only a Second Appeal lies against an order dismissing an application for condonation of delay and not an application under Article 227 of the Constitution of India, are not correct.

32. I therefore hold that CRP No.01 of 2026 filed by the petitioner therein challenging the order dt.01.09.2025 in Civil Misc.(Condonation) No.13 of 2025 rejecting the application for condonation of delay is certainly maintainable and the objection raised by the respondents that it is not maintainable, is rejected.

33. I also hold that T.A. No.15 of 2025 was rejected only in view of the dismissal of the Civil Misc.(Condonation) No.13 of 2025, by the judgment dt.01.09.2025 and against the decree dismissing the said appeal, RSA No.44 of 2025 is certainly maintainable.

34. Coming to the merits of the Revision CRP No.01 of 2026, the decree of the trial Court was passed only on 03.01.2025 though the judgment was pronounced on 21.12.2024. Therefore, the limitation for filing the First Appeal can only be counted from the date the decree is prepared, i.e. 03.01.2025. Admittedly, the appeal was presented on 08.05.2025 and the gap between the dates on which the decree was prepared and the appeal was filed is 125 days.

35. Since the application for obtaining certified copy was filed on 13.01.2025 and it was made ready on 01.02.2025, the 18 days time covered by that period is also liable to be excluded.

36. There is no dispute that the time prescribed for preferring the First Appeal from judgment of trial court to the First Appellate Court is 30 days . If the said period of 30 days and the 18 days period referred to supra are deducted from the total period of 125 days, the actual delay in filing the appeal is only 77 days and not 100 days as was noted by the Court below or 59 days as was stated by the petitioner in the delay condonation application.

37. Be that as it may, it has been the pleading of the petitioner/ appellant that there was a Winter Vacation of the Court and so the decree was prepared only thereafter on 03.01.2025, but he fell ill on 01.01.2025 and he was advised to bed rest for 10 days. It was stated that he again fell ill and was advised to bed rest from 07.02.2025 and as his condition remained serious, another doctor advised him to take 4 weeks' rest; so there was a delay in contacting the counsel and he could do so only on 23.02.2025. He also stated that the engaged counsel had gone away to Guwahati and had come only on 08.04.2025, that the petitioner again had serious fever and was advised bed rest for 4 weeks from 30.03.2025 and thus delay in filing the appeal occurred.

33. The view of the trial Court that the short delay of 10 days in applying for certified copy and another 4 days delay in receiving it was not properly explained and also that the prescriptions filed by the petitioner/appellant only advised rest and it cannot be said that he would require complete rest, is utterly perverse and cannot be sustained.

38. The fact remains that application for certified copy was made and it was received and due to illness, the petitioner/appellant could not immediately take steps to file the First Appeal. The delay has been satisfactorily explained.

39. In this view of the matter, the order dt.01.09.2025 in Civil Misc. (Condonation) No.13 of 2025 cannot be sustained and it is set aside and the said application is allowed.

40. Since the only reason for dismissal of the First Appeal was the dismissal of the application for condonation of delay on 01.09.2025 in Civil Misc.(Condonation) No.13 of 2025, once the said order is set aside and the delay is condoned, the order dismissing the First Appeal cannot be sustained and is accordingly set aside as well.

41. Consequently, CRP No.01 of 2026 is allowed and RSA No.44 of 2025 is also allowed and the Title Appeal No.15 of 2025 is restored to the file of the Court of the District Judge, Unakoti District, Kailashahar and the same shall be decided on merits after hearing both sides in accordance with law.

42. This exercise shall be completed by **30.04.2026**.

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

(M.S. RAMACHANDRA RAO, CJ)

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