

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

CRP. No.69 of 2013

**On the death of sole petitioner,
Jogesh Ch. Biswas, his legal heirs**

- 1. Sri Sukumar Biswas,**
son of Lt. Jogesh Ch. Biswas
- 2. Sri Rabindra Ch. Biswas,**
son of Lt. Jogesh Ch. Biswas
- 3. Sri Pradip Biswas,**
son of Lt. Jogesh Ch. Biswas
- 4. Smt. Snehlata Biswas(Nama),**
wife of Lt. Dulal Nama,
daughter of Lt. Jogesh Ch. Biswas
- 5. Smt. Anumati Biswas,**
wife of Lt. Sambhu Biswas
- 6. Miss Ayasi Biswas (minor),**
daughter of Lt. Sambhu Biswas

(Petitioner No.6 being minor is represented by her mother and natural guardian, the petitioner No.5),

-all residents of village-
Gandhigram, P.O. Gandhigram,
P.S. Airport, District-West
Tripura PIN 799012

- 7. Smt. Kanaklata Biswas(Sarkar),**
wife of Sri Benod Sarkar,
daughter of Lt. Jogesh Ch.
Biswas, resident of village & P.O.
Charipara, P.S. Amtali, District-
West Tripura
- 8. Smt. Debika Biswas,**
wife of Sri Ranajoy Majumder,
daughter of Lt. Jogesh Ch. Biswas,
resident of Bankumari (Sahapara)
P.O. Jogendranagar, P.S. East
Agartala, District-West Tripura

9. Smt. Jayashri Biswas (Das),
 wife of Sri Indrajit Das,
 daughter of Lt. Jogesh Ch. Biswas,
 resident of Ananganagar, P.O.
 Bimangarh, P.S. Airport, District-
 West Tripura

10. Smt. Manisha Biswas (Dutta),
 wife of Sri Rajib Dutta
 daughter of Lt. Jogesh Ch. Biswas,
 resident of village Hatirleta, P.O.
 Surjyamaninagar, P.S. Amtali
 District -Tripura West.

11. Smt. Sukla Biswas,
 wife of Sri Abhijit Das
 daughter of Lt. Jogesh Ch. Biswas
 resident of Chitta Ranjan Road
 (West side), Santipara, P.O.
 Agartala, P.S. East Agartala,
 District-Tripura West.

12. Smt. Rakhi Biswas (Das)
 wife of Sri Sujit Das
 daughter of Lt. Jogesh Ch. Biswas
 Resident of village & P.O. Paschim
 Bhubanban, P.S. West Agartala,
 District-Tripura West

..... **Petitioners**

- V e r s u s -

1. Sri Uttam Biswas @ Maran Biswas,
 son of Lt. Anil Ch. Biswas

**2. On the death of the respondent
 No.2, Makhan Chandra Biswas,
 his legal heirs**

(a) Smt. Sarathi Rani Biswas,
 wife of Lt. Makhan Chandra Biswas

(b) Sri Munna Biswas,
 son of Lt. Makhan Chandra Biswas

(c) Sri Rana Biswas,
 son of Lt. Makhan Chandra Biswas

-all residents of Charipara (Police Para) P.S Amtali, District-Tripura West.

3. On the death of the respondent No.3, Nitai Chandra Biswas, his legal heirs

(i) Smt. Jugal Rani Biswas,
wife of late Nitai Ch. Biswas

(ii) Sri Mihir Biswas,
son of late Nitai Ch. Biswas

(iii) Smt. Lipi Biswas,
daughter of late Nitai Ch. Biswas

(iv) Smt. Bulti Biswas,
daughter of late Nitai Ch. Biswas

-all of Police Para, village-Charipara, P.S. Amtali, District- Tripura West.

(v) Smt. Silpi Biswas(Sarkar),
wife of Sri Bishnu Sarkar
daughter of Lt. Nitai Ch. Biswas
resident of Narayanpur, P.S. Airport,
District Tripura West.

4. Sri Gouranga Biswas,
son of late Haricharan Biswas
resident of Charipara, P.S. Amtali,
District-Tripura West

..... Respondents

**BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA**

For the petitioners : Mr. D.R. Choudhury, Advocate

For the respondents : Mr. D. Chakraborty, Sr. Advocate
Mr. H. Laskar, Advocate

Date of hearing and : **23.04.2015**
delivery of judgment & order

Whether it is fit for reporting:

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.R Choudhury, learned counsel appearing for the petitioners as well as Mr. D. Chakraborty, learned senior counsel assisted by Mr. H. Laskar, learned counsel appearing for the respondents.

[2] This is a petition under Article 227 of the Constitution of India against the judgment and order dated 06.10.2012 in Misc. appeal 13 of 2010 by the Addl. District Judge No.2, West Tripura, Agartala.

[3] The facts essential for determining the challenged are that the petitioner instituted the suit for declaration of right, title and interest and for recovery of possession in the court of the Civil Judge, Junior Division No.2, Agartala, West Tripura being Title Suit 106 of 2006. As the petitioner had contemplated that it would be difficult for him to conduct the case, he appointed his son, namely Sukumar Biswas as his attorney for conducting the case for his behalf. Thus, the said attorney had been conducting the said suit. There is no dispute that the said suit was dismissed for non-appearance of the plaintiff on 28.11.2008 under Order IX Rule 8 of the C.P.C. After a delay of 283 days, the petitioner intended to file an application for setting aside the said order dated 28.11.2008 under Order IX Rule 9 of the C.P.C. inasmuch as it appeared to the petitioner that he shall be

precluded from bringing a fresh suit in respect of the said cause of action as described in the suit. Since there was a delay of 283 days as accounted for by the petitioner, the plaintiff in the suit along with that application filed under Order IX Rule 9 of the C.P.C. filed an application under Section 5 of the Limitation Act, 1963 for condonation of the said delay. In that petition, it has been stated that the wife of the petitioner, namely Charubala Biswas died on 06.10.2008 after her long ailments. The whole family was engaged in her treatment. On her death, the petitioner was under serious mental shock and he could not pursue the matter. What has surprised this court is that long after the death of his wife the suit being Title Suit No. 103 of 2006 was dismissed, i.e. on 28.11.2008. The petitioner in the petition for condoning the delay has stated that it took almost a year for applying for the certified copy. The application was made on 22.08.2009 and the same was ready for delivery on 10.09.2009. Thereafter, the attorney of the petitioner on instruction of the petitioner consulted with the counsel on 15.09.2009. The said counsel advised the attorney to make an application for setting aside the said order dated 28.11.2008. According to the petitioner, he asked for 'considerable amount for expenditure and others' and such amount should be paid within the 21/22 September, 2009. As the petitioner could not manage the money in the eve of Durga puja, the required step

could not be taken. When the petitioner could manage the money, he sent his attorney to the chamber of Mr. Bijan Saha, learned counsel in the second week of October, 2009. At that time, the learned counsel was out of station. He was at Guwahati. Thereafter, on instruction of the petitioner, the attorney again came to the chamber of the said counsel in the fourth week of October, 2009 and left the entire file/records with expenditure. Thereafter, the said application was filed. The delay has been explained in this way. Such explanation was seriously resisted by the defendants, the respondents herein, contending that those were not at all explanations to be considered as the sufficient cause. Such casual approach would only frustrate the public policy and the court should not be inclined to condone the delay. By the order dated 06.05.2010, the trial court has observed that the delay was 304 days instead of 283 days as accounted by the petitioner, in as much as the petitioner was not entitled to get any discount in view of the provision laid down in Section 12 of the Limitation Act. Be that as it may, the trial court has also observed that there is nothing on record to show that the petitioner was suffering from illness or that his illness was of such nature that he could not even instruct his attorney who was conducting suit from the very inception. Having held thus, the petition/application was dismissed.

[4] Being aggrieved by the order dated 06.05.2010, the petitioner filed an appeal under Order XLIII Rule 1(C) of the C.P.C. in the court of the District Judge, West Tripura ,Agartala. In the course of time, the said appeal was transferred to the court of the Addl. District Judge No.2, West Tripura, Agartala for its hearing. The said appeal being Misc. Appeal No.13 of 2010 was dismissed on hearing the parties. While dismissing the said appeal, the appellate court has observed that:

"From the records I also find that the original suit was represented by the constituted attorney, namely, Shri Sukumar Biswas. Even this appeal is also filed by the constituted attorney. I am in the opinion that while a suit is being looked after by a constituted attorney, it is the duty of the attorney to take proper care of the suit and for the negligence of the attorney if any suit is dismissed for default then ultimately the responsibility shifted to the plaintiff. So, from the facts and the reasons for delay as shown by the appellant herein, I find that it is solely personal problem of the plaintiff, not the problem of the constituted attorney. Moreover, from the impugned order I find that learned court below was not satisfied about the calculation of the delay and also did not find any material on record to believe the explanation put forward by the appellant to condone the delay. It is the discretion of the court to condone the delay. From the impugned order I find that learned court below rightly exercised his discretionary power. I do not find any ground to interfere with the impugned order. Hence, I find that this appeal is devoid of merit. Accordingly, the appeal is dismissed.

[5] Mr. D.R. Choudhury, learned counsel appearing for the petitioners has strenuously argued that the attorney, the son of the plaintiff, had also lost his mother and as such, there was serious dislocation. Moreover, Mr. Choudhury, learned counsel taking aid of the averments made in the petition filed for

condonation of delay has submitted that there was serious lapse on the part of the engaged counsel. Finally, he has emphatically submitted that considering the age of the petitioner that he is aged about 80 years, the court should exercise leniency and condone the delay. If the delay is not condoned, the petitioner is bound to face serious detriment about the interest on the suit land.

[6] From the other side, Mr. Chakraborty, learned senior counsel appearing for the respondents has submitted that no material has been placed by the petitioner in the petition or on the records to provide a space for the court to exercise its discretion. Therefore, the rigour of the public policy must follow. Moreover, the orders passed by the courts below do not suffer from any infirmity and those are well reasoned and those do not warrant interference from this Court.

[7] Having given an anxious consideration over the facts on records, this Court finds that the lackadaisical approach of the petitioners and his attorney led to dismissal of the suit for non-prosecution. Even though the courts are known to exercise certain amount of leniency in the matter of condonation of delay, but at the same time, the court cannot indulge aberrations to entirely frustrate the public policy. Somewhere, we must have some full stop, beyond what even the court

should not exercise the latitude. The explanations as provided do not generate any confidence to accept those as genuine. Hence, the impugned finding cannot be held to suffer from any infirmity.

Accordingly, this petition stands dismissed.

However, there shall be no order as to costs.

JUDGE

Sujay