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2026:GAU-AS:16857

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/595/2026

DHIREN CHASSA AND ANR
S/O LATE DOYA CHASSA, R/O HATIBONDHA POTHAR GAON, P.O.- TIMON (BHOJO), DIST- CHARAIDEO, ASSAM, PIN- 785691

2: GUNESWAR CHASSA
S/O LATE DOYA CHASSA
R/O HATIBONDHA POTHAR GAON
P.O.- TIMON (BHOJO)
DIST- CHARAIDEO
ASSAM
PIN- 78569

VERSUS

MUKUT DUTTA AND 2 ORS.
SON OF LATE BHUPEN DUTTA, R/O HATIBONDHA POTHAR GAON, P.O.- TIMON (BHOJO), DIST- CHARAIDEO, ASSAM, PIN- 785691

2:BHABJYOTI DUTTA
SON OF LATE BHUPEN DUTTA
R/O HATIBONDHA POTHAR GAON
P.O.- TIMON (BHOJO)
DIST- CHARAIDEO
ASSAM
PIN- 785691

3:RUPJYOTI DUTTA
SON OF LATE BHUPEN DUTTA
R/O HATIBONDHA POTHAR GAON
P.O.- TIMON (BHOJO)
DIST- CHARAIDEO
ASSAM
PIN- 78569

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri H. P. Guwala, Advocate.
Advocate for the respondents : xxxxxx

Date of hearing : **16.11.2026**
Date of Judgment : **16.11.2026**

JUDGMENT & ORDER

Heard Shri H. P. Guwala, learned counsel for the petitioners.

2. The instant petition has been filed under Article 227 of the Constitution of India challenging an order dated 12.10.2026 passed by the learned Civil Judge (Jr. Div), Charaideo at Sonari in Misc. (J) Case No. 05 of 2026 arising out of Title Suit 17 of 2021. Vide the impugned order, the delay of 148 days in filing the restoration petition has been condoned.

3. To appreciate the grounds, it would be convenient if certain facts of the case are narrated in brief.

4. The petitioners are the defendants in the aforesaid Title Suit. The said suit instituted by the respondents as plaintiff was, however, dismissed for default on 31.10.2025. Thereafter, an application for restoration was filed, accompanied by an application under Section 5 of the Limitation Act for condonation of delay registered as Misc. (J) Case No. 05 of 2026. The learned Trial Court, vide the impugned order dated 12.10.2026, has condoned the delay. It is the legality and validity of the said order which has been questioned in the present petition.

5. Shri Guwala, the learned counsel for the petitioners has submitted that condonation of delay cannot be done in a mechanical manner and the aspect of

sufficiency of the grounds has to be looked into. He has submitted that no sufficient grounds were cited and the only ground which was cited was the negligence on the part of the conducting counsel. He has submitted that the parties in the litigation have to be vigilant and merely by putting the blame on the counsel would not entitle them to get the benefit of condonation of delay. He has submitted that no sufficient causes being shown, the petition ought to have been dismissed.

6. In connection with his submission, the learned counsel for the petitioners has relied upon a decision of the Hon'ble Supreme Court reported in ***2024 INSC 891 (Rajneesh Kumar & Arn. Vs. Ved Prakash)***. He has submitted that in the said case, the Hon'ble Supreme Court has held that putting the blame on the counsel may not be sufficient in all cases to make out a case for condonation of delay. He has also drawn the attention of this Court to the written objection filed to the application for condonation of delay.

7. The submissions advanced have been duly considered.

8. At the outset, this Court is reminded of the fact that the principles which would govern while adjudicating an application for condonation of delay is that a justice-oriented and pragmatic approach has to be taken. Of course, it would be necessary for the party to plead sufficient grounds to make out a case for such condonation. In the instant case, there was a delay of 148 days in filing the application under Order 9 Rule 9 CPC for restoration of the suit. The learned Trial Court, after hearing the matter, has come to a conclusion that the respondent as plaintiff was able to make out a case for condonation of delay as there was apparent negligence on the part of the earlier counsel in conducting the case. In the said order, the learned Trial Court has also discussed regarding the principles which are to be governed in adjudicating such a petition. For

ready reference, the said observations are extracted hereinbelow:

> "*Section 5 of Limitation Act empowers court to admit a petition after expiry of period if sufficient cause is shown for not making it within such period.*
>
> *The law is settled law that the expression" sufficient cause" is to be construed in a justice oriented manner, having regard to the facts and circumstances of each case.*
>
> *A litigant should not ordinarily be made to suffer for a bonafide mistake or lapses of counsel where the litigant has acted with reasonable diligence. It is also important that after filing the suit, the plaintiff has to keep a track of the suit.*
>
> *However considering the overall circumstances pleaded, the applicant's stated reliance upon their counsel, steps taken by them after allegedly acquiring the knowledge of the dismissal and the nature of relief sought, this court is of considered opinion that for the end of justice, the prayer for condonation the delay is allowed subject to a cost of Rs. 2000/-.*
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> *The instant Misc(j) is hereby allowed and disposed of on contest."*

9. This Court has noticed that the learned Trial Court, while condoning the delay, had also imposed a cost of Rs.2,000/-.

10. The reliance by the learned counsel for the petitioner on the case of ***Rajneesh Kumar*** (supra) would be misplaced. A perusal of the order passed by the Hon'ble Supreme Court would at the outset show that the delay was an inordinate one of 534 days, that too in preferring an appeal. The more important fact was that there was a clear finding by the Hon'ble High Court, which was also recorded by the Hon'ble Supreme Court in the order, that the parties seeking condonation were aware of the facts and there was willful and deliberate suppression and the parties had not approached the Court with clean hands. The facts and circumstances leading to passing of the aforesaid order by the Hon'ble Supreme Court are entirely different from the present case.

11. This Court has also noticed that the application has been presented under Article 227 of the Constitution of India. On a perusal of the provisions of Section 115 of the Code of Civil Procedure 1908, this Court is of the view that the aforesaid provision of law is the appropriate provision under the CPC for which,

recourse to Article 227 of the Constitution of India cannot be taken. In this regard, one may gainfully take the aid of the case of the Hon'ble Supreme Court of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society &Ors.,*** reported in ***(2019) 9 SCC 538*** wherein it has been laid down that availability of the remedies under the CPC is a near total bar for invoking the jurisdiction under Article 227 of the Constitution of India. For ready reference the relevant paragraphs are extracted hereinbelow-

> "*11. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu vs. S. Chellappan & Ors, (2000) 7 SCC 695, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy".*
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> *12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai, (2003) 6 SCC 675, pointed out in Radhey Shyam vs. Chhabi Nath, (2015) 5 SCC 423 that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.*
>
> *13. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."*

12. This Court is however of the view that even without going to the technical aspect of the matter, the petitioner has not been able to make out a case for exercise of revisionary jurisdiction as such jurisdiction is to be exercised only in a circumscribed manner, namely, when there is an error of jurisdiction in adjudicating a matter. In the instant case, this Court is of the opinion that no such error in exercise of jurisdiction appears and accordingly the petition is dismissed.

JUDGE

Comparing Assistant