GAHC020008792026 2026:GAU-NL:625

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

Case No. : C. REVN/13/2026

DR. ALEMLA AIER AND 2 ORS
D/O LATE YASHITSUNGBA AO, R/O HOUSE NO. 25A, KHERMAHAL,
DIMAPUR, NAGALAND - 797112

2: MR. KIKOBA
S/O LATE DR. KISHORE YADAV
R/O HOUSE NO. 222
SUB JAIL TINALI
ORIENTAL COLONY
DIMAPUR
NAGALAND - 797117

3: MR. JINYABA
S/O LATE DR. KISHORE YADAV
R/O HOUSE NO. 222
SUB JAIL TINALI
ORIENTAL COLONY
DIMAPUR
NAGALAND - 79711

VERSUS

SMTI. MENGUKIEU ANGAMI
D/O LATE TOKUKHRIELIE ANGAMI, R/O NOTUN BASTI DIMAPUR,
NAGALAND - 797113

Advocate for the Petitioner : IMTI LONGJEM, CATHERINE ANICHAR,I MOSEMSA LONGKUMER

Advocate for the Respondent : LENTSO SANGTAM,

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Petitioner : Mr. Imti Longjem
Mr. I. Mosemsa Longkumer
Ms. Catherine Anichar

Advocate for the Respondent : Mr. Angshuman Sarma
Mr. Lentso Sangtam

Date on which judgment is reserved : 16.11.2026

Date of pronouncement of judgment : 20.11.2026

Whether the pronouncement is of the Operative part of the judgment ? : No

Whether full judgment has been pronounced ? : Yes

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

JUDGMENT & ORDER (CAV)

Date : 20-11-2026

The present petition filed under Article 227 of the Constitution of India takes exception to the impugned order dated 18.09.2026 passed by the learned Civil Judge (Senior Division) Dimapur Nagaland in I.A.No.83/2026 arising out of Summary Suit Case No.4/2026 whereby the application preferred by the petitioners as defendants under Order 37 Rule

3 of the Code of Civil Procedure, 1908 (CPC hereinafter) seeking leave to defend the suit has been rejected.

2. Heard the learned counsel for the petitioners Mr. Imti Longjem. Also heard Mr. Angshuman Sarma, learned counsel appearing for the respondent.

3. The facts of the instant case are that the petitioners are the defendants in the Summary Suit Case No.4/2026 pending before the learned Civil Judge (Senior Division) Dimapur. It is stated that the dispute arose out of a monetary transaction between the parties. The Summary Suit has been instituted seeking recovery of an alleged outstanding amount of Rs.1,02,40,000/- (One crore two lakhs forty thousand only). The petitioners/defendants however, dispute this claim of outstanding liability and state that they have a substantial and bonafide defence on merits.

4. It is stated that the learned Trial Court issued notice in the Summary Suit on 10.06.2026 fixing 31.07.2026 for appearance of defendants/service report/necessary orders. The petitioners received the summons along with the order dated 10.06.2026 and a copy of the plaint on 11.06.2026. Though in the order dated 10.06.2026 it was mentioned that 31.07.2026 is fixed for appearance of the defendants, on the summons dated 10.06.2026 issued by the Court the defendants were summoned to enter appearance within 10 days wherein it was also mentioned that the petitioners/defendants shall be entitled to move the Court for leave to defend the suit. The period of 10 days for entering appearance expired on 21.06.2026 which fell on a Sunday. The learned Civil Judge (Senior Division) was on leave on 22.06.2026. Accordingly, the

petitioners/defendants entered appearance on 23.06.2026 through their counsel and filed the address for service which was verified and accepted by the learned Trial Court. The petitioners further prayed for time to file necessary petition for leave to defend. By order dated 23.06.2026, the case was adjourned and fixed on 31.07.2026 for appearance/petition/necessary orders.

5. Thereafter, the respondent/plaintiff filed application for service of summons for judgment under Order 37 Rule 3(4) CPC on 01.07.2026. On 03.07.2026, the petitioners received the summons for judgment along with order dated 01.07.2026 and copy of the application under Order 37 Rule 3(4). The summons for judgment directed all the parties concerned to attend the Court on 31.07.2026. In the order dated 01.07.2026 it was reflected that the petitioner's counsel was absent since the matter has already been fixed for hearing on 31.07.2026. Accordingly, the respondent/plaintiff was directed to serve summons returnable on the next date and the matter was again fixed on 31.07.2026 for appearance/necessary petition, if any by the defendants/necessary orders.

6. It is the case of the petitioners that since the learned Trial Court by previous orders dated 23.06.2026 and 01.07.2026 had fixed 31.07.2026 to file the petition for leave to defend, the counsel for the petitioners filed an application under Order 37 Rule 5 CPC read with section 151 of the CPC seeking leave to defend the suit on 31.07.2026. The said application was accompanied and supported by an affidavit filed by the petitioners. The application for leave to defend and the affidavit was registered and numbered as I.A 83/2026 and fixed on 17.09.2026 for hearing of the said application for leave to defend.

7. It is also the case of the petitioners that their counsel has tried to file the application for leave to defend on 10.07.2026, however, the learned Trial Court informed the counsel that since the matter has already been fixed on 31.07.2026, the application has to be filed only on the said date. To support his contention, the counsel for the petitioner/defendant has sworn an affidavit dated 06.10.2026 affirming that he had made effort to file the application for leave to defend on 10.07.2026 and that he was informed by the Court that since the matter had already been fixed on 31.07.2026, the said application was to be filed on the date so fixed. Therefore, it is stated that the application was filed only on 31.07.2026.

8. Subsequently, the Presiding Officer was transferred on promotion and the matter was taken up by the new incumbent on 17.09.2026. On the said date of hearing an objection was filed by the respondent/plaintiff to the application for leave to defend filed by the petitioners/defendants. Upon conclusion of hearing, the learned Trial Court by the impugned order dated 18.09.2026 rejected the application for leave to defend the suit as time barred. Furthermore, the learned Trial Court held that the respondent/plaintiff is entitled to seek appropriate judgment and fixed 30.10.2026 for judgment/decree. Being aggrieved, the petitioners are before this Court.

9. The learned counsel for the petitioners Mr. Imti Longjem submits that the summons for judgment dated 01.07.2026 was received by the petitioners on 03.07.2026. Hence, the period of 10 days under Order 37 Rule 3(5) CPC would have been over by 13.07.2026. The counsel for the petitioner went to file the application for leave to defend on 10.07.2026, much before the expiry of the 10 days period, but the learned

Trial Court did not accept the same and such fact is supported by the affidavit sworn by the learned counsel on 06.10.2026.

10. The learned counsel for the petitioners submits that all along from the very first day on which the notice was issued i.e. 10.06.2026, the Court had fixed 31.07.2026 for appearance and filing of necessary petition, if any, by the defendants. The application for leave to defend was accepted and registered on 31.07.2026 but the learned trial Court held that it was time barred. On 17.09.2026 when the matter was heard, the petitioners/defendants prayed for time to file reply to the objection filed by the respondent/plaintiff. However, this prayer was not granted by the Trial Court and instead the impugned order dated 18.09.2026 has been passed.

11. The learned counsel for the petitioner submits that the delay was due to fixing of the date by the Court as 31.07.2026 and cannot be attributed to the petitioners. Hence, there was no necessity of filing a condonation application. Further, for the mistakes committed by the Court, the petitioners should not be made to suffer. And prays that the impugned order dated 18.09.2026 maybe quashed and set aside and the matter maybe remanded back to the learned court below to hear the petitioner/defendants on their application for leave to defend. The learned counsel for the petitioners in support of his submissions has relied on the following judgments:-

1. ***Shaikh Salim Haji Abdul Khayumsab vs Kumar & Ors*** reported in ***(2006) 1 SCC 46***
2. ***A.R. Antulay vs R.S. Nayak*** reported in ***(1988) 2 SCC 602***

3. ***B.L. Kashyap and Sons Limited vs JMS Steels and Power Corporation*** reported in ***(2022) 3SCC 294***

4. ***Shalini Shyam Shetty vs Rajendra Shankar Patil*** reported in ***(2010) 8 SCC 329***

5. ***Garment Craft vs Prakash Chand Goel*** reported in ***(2022) 4 SCC 181***

12. Per contra, Mr. Angshuman Sarma the learned counsel appearing for the sole respondent would submit that the summon fixing 31.07.2026 was for judgment in the suit and not for filing leave to defend. As per the provision of Order 37 Rule 3(5) CPC, the petitioners were required to file their leave to defend by 13.07.2026 as the summon was admittedly received on 03.07.2026. Even though the petitioners have contended that their counsel had tried to file the application for leave to defend on 10.07.2026 there is no order on record to show that such an attempt was made. Accordingly, the petitioners have failed to show any materials basing on which this Court can come to a satisfaction that effort was made to file the leave to defend on 10.07.2026. Moreover with regard to statements made at paragraph 12 of the instant petition, the petitioners have averred in the accompanying affidavit enclosed with the petition that paragraph 12 is derived from records. However, no records are enclosed in the instant petition and therefore no aspersions can be cast on the learned Trial Court. In fact, the affidavit dated 06.10.2026 is an afterthought which has been executed after the impugned judgment was passed.

13. The learned counsel for the respondent has drawn the attention of this Court to the application for leave to defend where it is

accepted and signed by the learned trial Court on 31.07.2026 on the body of the application. And in the affidavit accompanying the leave to defend, the date of verification is given as 27.07.2026. These records clearly reveal that the petitioners had certainly not filed any application on 10.07.2026. Further, the learned counsel for the respondent also submits that in the application for leave to defend filed on 31.07.2026, there is no mention that the petitioner had tried to file an application on 10.07.2026 and there is also no application for condonation of delay nor any cause shown for the delay in filing the application for leave to defend.

14. It is the further submission of the learned counsel for the respondent that in order to entertain a petition under Article 227 of the Constitution, the petitioners have to first show that the Court below had committed some illegality or some perversity which had prevented the petitioners from filing the leave to defend on time. He submits that Order 37 Rule 3(5) CPC is mandatory in nature and cannot be ignored. And if such application is filed beyond the period of 10 days, it has to be accompanied by a condonation application or show sufficient cause in the leave to defend application itself for the delay. But in the instant case, the petitioners have been totally negligent and there is absolutely no cause shown for the delay in filing the application. In fact, the petitioners have voluntarily not taken the benefit of Order 37 Rule 3(7) of the CPC. In support of his submission, the learned counsel for the respondent has relied on the following cases:-

i. ***Estralla Rubber vs Dass estate (P) Ltd reported*** in ***(2001) 8 SCC 97.***

ii. ***Teri Oat Estates (P) Lts vs U.T. Chandigarh and Others*** reported in ***(2004) 2 SCC 130.***

iii. ***Ajay Bansal vs Anup Mehta and Others*** reported in ***(2007) 2 SCC 275***

iv. ***Noharlal verma vs District Cooperative Central Bank Limited, Jagdalpur*** reported in ***(2008) 14 SCC 445***

v. ***Mohd. Yunus vs Mohd. Mustaqim and Others*** reported in ***(1983) 4 SCC 566***

15. In view of these submissions made above, the learned counsel for the respondent contends that the impugned order dated 18.09.2026 does not suffer from any perversity or illegality and therefore the petitioners have failed to make out a case for interference of this Court under Article 227 of the Constitution of India.

16. I have duly considered the submissions made by the learned counsel for the parties and perused the TCR and also the judgments relied upon by the parties.

17. The Supreme Court in the case of *Estralla Rubber (supra)* held that in a petition under Article 227 of the Constitution, the High Court can set aside or ignore the findings of fact of an inferior Court or Tribunal if there is no evidence at all to justify or the finding is so perverse that no reasonable person can possibly come to such a conclusion, which the Court or Tribunal has come to. However, the exercise of this power is restricted only to the cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice.

18. The scope of Article 227 of the Constitution is limited and supervisory. It is not an appellate or general revisional power. This Court

can interfere only when a decision or view taken by the Court below is so absurd or arbitrary that no reasonable judicial mind could have arrived at it or when there is total denial of a fair hearing or when there is a flagrant disregard of law or when the Court has assumed a jurisdiction it does not have or refused to examine jurisdiction which it has. This Court cannot re-examine the evidence or substitute its own view just because a second opinion is possible.

19. The provision of order 37 Rule 3(5) of the CPC permits a defendant to move an application seeking leave to defend the suit filed under Order 37 at any time within 10 days from the service of summons for judgment, disclosing such facts as may be deemed sufficient to entitle him to defend the suit. Rule 3(7) of Order 37 CPC further empowers the Court to condone the delay for sufficient cause shown by the defendant in applying for leave to defend the suit. Order 37 Rule 3 CPC is the most important stage in a summary procedure. The provisions of Order 37 Rule 3 CPC are reproduced here below for convenience:

> "**3.** ***Procedure for the appearance of defendant****.—(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.*
>
> *(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the*

defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be. (4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just: Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious: Provided

further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,— (a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or (b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit."

20. As per the provisions of Rule 3 the defendant must enter appearance within 10 days from the service of summons. The appearance is entered by filing a memorandum of appearance and furnishing the prescribed particulars. The defendant must also serve the notice of acceptance upon the plaintiff's Advocate or the plaintiff as the case may be.

21. In the instant case, there is no dispute with regard to the appearance of the defendants. Once the defendants enter appearance, the plaintiff serves a summon for judgment in Form 4A, Appendix B. The summons must be supported by affidavit verifying the cause of action and the amount claimed and stating that the plaintiff believes that there is no defense to the suit. The defendant must apply for leave to defend within 10 days from the service for summon for judgment. In the instant case, it is seen from the records that the summon for judgment under Order 37 Rule 3(4) of CPC was issued on 01.07.2026 and received by the petitioners on 03.07.2026. Accordingly, the application for leave to defend should have been filed by 13.07.2026.

22. The petitioners have claimed that they tried to file the application for leave to defend on 10.07.2026 but the learned trial Court had informed the counsel for the petitioners/defendants that since the matter was already fixed on 31.07.2026, the application had to be filed only on the said date. This statement is the only ground relied upon by the petitioners to claim that they had tried to file the application within the period of 10 days but was not allowed to do so by the Trial Court.

23. This Court has also observed that there is nothing on record to show that such an attempt was made to file the application on 10.07.2026 and there is also no order passed by the learned Trial Court on 10.07.2026. Even assuming that the court below had mistakenly fixed 31.07.2026 for filing of application for leave to defend the petitioners were represented by legal counsel throughout the proceedings and it was evident that the 10 days period as mandated in Order 7 Rule 3(5) CPC started running from 03.07.2026 when the petitioners received the

summons for judgment and therefore it was incumbent on the part of the petitioner defendant to file an application for condonation of delay or at least explain the cause for delay in the application for leave itself. In such circumstances, sufficient cause was required to be shown by the petitioners for condoning the delay in applying for leave to defend the suit when they filed the same on 31.07.2026. The date on the body of the application for leave to defend and the date of the affidavit accompanying the application contradicts the submission of the petitioners that they had tried to file the same on 10.07.2026. There is no application on record seeking condonation of the delay on behalf of the petitioners. The application seeking leave to defend also does not contain even a single averment whatsoever showing cause for the delay or even stating that the counsel tried to file the same on 10.07.2026. In case there had been any application by the petitioners seeking condonation of delay or any averment in the said application with regard to the attempt to file the same on 10.07.2026, the learned Trial Court would have had an opportunity to examine the delay and either allow the condonation or reject the same in exercise of its discretionary powers. In the absence of there being any prayer by the petitioners in this regard, the learned trial Court has correctly passed the impugned order dated 18.09.2026.

24. Order 37 Rule 3(7) CPC expressly provides that the Court may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering appearance or in applying for leave to defend the suit. Order 37 Rule 3(7) of the CPC, clearly states in unambiguous terms that the Court may condone the delay in filing the leave to defend only if sufficient cause is shown by the defendants. Therefore, the power to

condone the delay exists expressly within the CPC itself. Further, Section 5 of the Limitation Act, 1963 states that an application may be admitted after the prescribed period, if the applicant satisfies the Court that he had "sufficient cause" for not making the application within the prescribed period. Accordingly, in Summary Suits, in case, of delay in filing an application for leave to defend, the burden is on the party seeking extension of limitation, to show that it acted with care and attention, and was not negligent or careless.

25. In a recent judgment of the Madhya Pradesh High Court in Misc Petition 3966 of 2024, *Nitin Singhal vr. Ashish Goyal*, reported in 2026 MPHC-GWL-30366, the Court held that when there was no application seeking condonation of delay and when the leave to defend application itself contained no averment explaining the delay, the Trial Court condoning the delay on its own amounted to a jurisdictional error.

26. The principal contention advanced on behalf of the revision petitioner is that the delay in filing the application seeking leave to defend was occasioned by the learned trial Court itself, which had allegedly orally directed the defendant to file the application on a subsequent date falling beyond the prescribed period of ten days. It is, therefore, contended that the defendant cannot be made to suffer for the oral direction of the Trial Court.

27. I am unable to accept the said contention. A perusal of the order sheets of the learned trial Court does not disclose any such direction or permission being granted to the defendant to file the application for leave to defend beyond the period prescribed under Order 37 Rule 3(5) CPC. Neither is there any contemporaneous application or endorsement on

record indicating that the defendant petitioner had sought permission to file the application on a subsequent date or that he had been prevented from filing the same within the prescribed period.

28. The assertion that an oral direction had been given by the learned trial Court is, therefore, unsupported by any material on record and as stated above, there is no averment about such oral direction in the application for leave to defend. A mere submission made on behalf of the revision petitioner, in the absence of supporting material, cannot constitute sufficient cause within the meaning of Order 37 Rule 3(7) CPC.

29. The discretion conferred under Rule 3(7) is exercisable upon sufficient cause being shown by the defendant and cannot be invoked on the basis of an unsubstantiated assertion. Consequently, the defendant cannot claim exemption from the statutory requirement merely on the ground of an alleged oral direction of the Court which finds no reflection in the trial court records. In the opinion of this Court, the learned Trial Court was justified in declining to entertain the application. As per Order 37 Rule 3(7) of CPC, the defendant bears the burden of showing sufficient cause. The Court is not required to invent reasons for the delay or presume that the delay was bonafide.

30. In view of the discussions hereinabove, the judgments relied upon by the petitioners have no relevance in the instant case as the records do not show that there was any irregularity on the part of the trial Court in passing the impugned order.

31. In the backdrop of the above findings, this Court finds that no ground has been made out by the petitioners for the interference of this

Court under Article 227 of the Constitution of India and accordingly, the petition is dismissed.

JUDGE

Comparing Assistant

Kiyazhatuou Chase

Digitally signed by Kiyazhatuou Chase
Date: 2026.11.20 11:53:47 +05'30'