



**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.03 of 2026

a/w

CRP No.14 of 2026

1. Sri Sukesh Chandra Saha, aged about 77 years, S/o Late Manoranjan Saha, R/o Central Road, Udaipur Town, P.O. R.K. Pur, PIN-799120, P.S. R.K. Pur, Udaipur, District- Gomati, Tripura
2. Smt. Swapna Rani Saha, aged about 57 years, W/o Late Narayan Saha, R/o Central Road, Udaipur Town, P.O. R.K. Pur, PIN-799120, P.S. R.K. Pur, Udaipur, District- Gomati, Tripura
3. Sri Santanu Saha, aged about 25 years, S/o Late Narayan Saha, R/o Central Road, Udaipur Town, P.O. R.K. Pur, PIN-799120, P.S. R.K. Pur, Udaipur, District- Gomati, Tripura
4. Smt. Jhumu Saha, aged about 38 years, D/o Late Narayan Saha, R/o Central Road, Udaipur Town, P.O. R.K. Pur, PIN-799120, P.S. R.K. Pur, Udaipur, District- Gomati, Tripura

.....Appellant/Petitioner(s);

Versus

Sri Parimal Saha, S/o Late Kshetramohan Saha, R/o Central Road, Udaipur Town, P.O. R.K. Pur, PIN-799120, P.S. R.K. Pur, Udaipur, District- Gomati, Tripura

.....Respondent(s)

For Appellant/Petitioner(s) : Mr. Abhijit Sengupta, Advocate.

For Respondent(s) : Mr. Dilip Kumar Das Chawdhury, Advocate.

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

Date of hearing : **13.05.2026**

Date of Pronouncement : **30.06.2026**

Whether Fit for Reporting : **YES**

JUDGMENT & ORDER

As the parties to these two proceedings are one and the same, and as they both arise out of the same Title Appeal No.19 of 2025 on the file of the learned District Judge, Gomati District, Udaipur, they are being disposed of by this common Order.

**Background Facts:**

2. The first petitioner in CRP No.14/2026, who is also the first appellant in RSA No.03/2026 is the first Defendant in Title Suit 02 of 2021 on the file of the Civil Judge (Sr. Division), Udaipur, Gomati District.

3. The other petitioners in CRP No.14/2026 and the other appellants in RSA No.03/2026 are legal heirs of Lt. Narayan Saha, who was the second Defendant in the said suit.

4. The parties will henceforth be referred to as per their array in the suit.

Title Suit 02 of 2021:

5. The said suit had been filed by the plaintiff/respondent herein to declare his right, title and interest in the suit schedule property and for recovery of possession of the same.

He contended that the suit schedule property belonged to his mother Smt. Soudamini Saha, that she allowed Manoranjan Saha, the father of the Defendants to stay on the said land on condition that he would vacate it as and when demanded by her, that both died subsequently, and then the Defendants occupied the said land on same terms and conditions. He contended that her name is recorded in the record of rights vide CS Khatian No.1353 of mouza Udaipur Town with a remark in the Remark column that Manoranjan Saha was a permissive possessor. He contended that the Defendants are trespassers and are liable to be evicted from the said land.

The Written Statement filed by defendants:

6. The Defendants had filed a Written Statement opposing the grant of relief to the plaintiff/respondent herein.



The Defendants denied the plea of the plaintiff that the suit schedule property belonged to his mother Smt. Soudamini Saha. They contended that the land was Government land, and their predecessor by name Manoranjan Saha along with another had occupied it. According to them, in a Khatian, the names of their predecessor Manoranjan Saha and one Gopi Ranjan Chakraborty were recorded as unlawful occupiers, and that the said Khatian did not mention the name of the mother of the plaintiff Smt. Soudamini Saha.

7. However their Advocate Sri Jayanta Prasad Deb withdrew himself from the suit by filing a petition before the Trial Court on 19.12.2022 which was allowed on 01.02.2023. An order was passed on 20.03.2023 making them *ex parte* in the suit.

8. Subsequently, after considering the evidence adduced by the plaintiff, Title Suit 02 of 2021 was decreed on 22.08.2023.

Civil Misc. (Condo) 19 of 2025 and Title Appeal 19 of 2025:

9. The Defendants filed Title Appeal No.19 of 2025 before the District Judge, Gomati District, Udaipur along with an application being Civil Misc. (Condo) 19 of 2025 under Section 5 of the Limitation Act, 1963 to condone the delay of 23 months 8 days in filing the said Appeal.

10. In Civil Misc. (Condo) 19 of 2025, they contended that they had engaged one Sri S.K. Bhattacharjee as their counsel in the suit to conduct the case on their behalf, but he left the State and handed over the records to another Advocate Sri Jayanta Prasad Deb. According to them, he withdrew himself from the suit as their Advocate by filing a petition before the Trial Court on 19.12.2022 which was allowed on 01.02.2023 and this resulted in



the *ex parte* judgment passed on 22.08.2023 against them. They contended that they had no knowledge of the same, as he had not informed them about his withdrawal from the suit.

11. It was contended that the Defendant No.1 was a person intermittently of unsound mind for the previous five years, and Defendant No.2 was taking information from the lawyer, but Defendant No.2 fell ill and failed to contact the lawyer believing that the lawyer would inform him about the suit.

12. They contended that due to withdrawal of the lawyer from the case, the suit was decreed *ex parte* as mentioned above on 22.08.2023, and that the Defendant No.2 had come to know about the ex-parte decree only after receiving the summons in Ex (T) 01 of 2024 filed by the respondent for executing the decree in the suit.

13. It was contended that the second Defendant had handed over the case records to one Sri Atanu Das, Advocate of the Udaipur Bar, but without conducting the case, he returned the case records to the second Defendant on 16.12.2024 with a no objection given on *vakalatnama* for conduct of the case by another lawyer.

14. It is also contended that the Defendants had filed an application being Civil Misc.86/2024 under Order IX Rule 13 CPC for setting aside the ex-parte decree in Title Suit 02 of 2021, but the same had been dismissed on 21.06.2025 by the said Court on the ground of non-maintainability.

15. They contended that the delay in filing Title Appeal 19 of 2025 was not intentional on their part, and if the delay is not condoned, they would suffer irreparable loss and injury.



Events after filing the Title Appeal 19 of 2025:

16. After filing of the said application, the Defendant No.2 died on 20.08.2025.

16A. So an application under Order XXII Rule 4 read with Section 151 CPC was filed by the legal heirs of the second Defendant Lt. Narayan Saha to bring them on record.

The impugned order dt.26.11.2025 in Civil Misc. (Condo) 19 of 2025

17. By the impugned order dt.26.11.2025, the District Judge, Gomati District, Udaipur first dismissed the application under Order XXII Rule 4 read with Section 151 CPC filed by the legal heirs of the second Defendant.

17A. According to him, application under Section 5 of the Limitation Act, 1963 for condonation of delay in taking steps to substitute the legal representatives of deceased – second Defendant had not been filed along with the application for substitute as legal heirs of the Defendant No.2, and that such application for substituting a deceased Defendant's legal representative, has to be filed within 90 days from the date of death, and the same had not been done.

18. The District Judge then went on to consider the application for condonation of delay and held that the reasons furnished for delay in filing the Title Appeal 19 of 2025 were vague and unsatisfactory.

19. He noted that the Defendants had offered the explanation that the earlier counsel failed to inform them, but held that it did not constitute a circumstance beyond their control.

20. He held that it was the duty of the litigants to remain vigilant and follow up their case, and in case of difficulties, to engage another counsel.



21. He also noted that no complaint had been lodged before any competent authority against the alleged defaulting counsel, and therefore the explanation offered for the delay was doubtful.

22. He also held that orders of courts are available on the official website, and the plea that the Defendants remained unaware for a long period is untenable in the present digital era where communication is easily accessible because litigants are expected to exercise due diligence.

23. According to him, the delay in filing the Title Appeal 19 of 2025, was inordinate and wholly unexplained, and did not fall within 'sufficient cause', and so the application deserved to be dismissed.

The impugned order dt.26.11.2025 dismissing T.A. No.19 of 2025.

24. After dismissing the application filed by the Defendants seeking condonation of delay, by a separate order the District Judge also dismissed Title Appeal 19 of 2025 as a consequence of the same.

The CRP and the RSA and consideration by this Court

25. Heard Mr. Abhijit Sengupta, learned counsel of the appellants/petitioners and Mr. Dilip Kumar Das Chawdhury, learned counsel for the sole respondent.

Submission of counsel for defendants/appellants/petitioners:

26. Counsel for the Defendants contended that the orders passed by the learned District Judge in the application for condonation of delay, and in the Title Appeal are erroneous and that the learned District Judge ought to have seen that the counsel had withdrawn from the suit without informing the defendants; this fact was ignored by the District Judge making his order



perverse and incorrect. He also contended that the defendants had filed application under Order IX Rule 13 CPC which was also erroneously dismissed on 21.06.2025 and this factor was also not taken into account by the District Judge. He contended that a liberal approach should be taken while considering applications for condonation of delay. He further contended that the first Defendant was aged 77 years, and was sometimes of unsound mind, and the second Defendant was also a senior citizen aged 61 years, who was his brother. He contended that the withdrawal of Advocates in both the trial and First Appellate Courts at a critical time had caused grave prejudice to the Defendants, and they had also diligently pursued Civil Misc.86/2024 filed under Order IX Rule 13 CPC, and so a liberal view must be taken and both impugned orders have to be set aside and appropriate relief be granted to the Defendants.

26A. Counsel for the Plaintiff refuted the said contentions and supported the orders/judgment of the lower appellate court.

Consideration by the Court:

27. The questions for consideration in the CRP is:

(i) *“Whether the materials on record were ignored by the District Judge while dismissing the Civil Misc. (Condo) 19 of 2025?”*

(ii) *“Can it be said that the District Judge failed to exercise jurisdiction vested in him and/or whether acted in exercise of his jurisdiction illegally or with material irregularity?”*

28. The question for consideration in the RSA is:

“ Whether the dismissal of T.A.No.19 of 2025 by the District Judge is based on materials available on record?”



29. It is not in dispute that the Defendants did file a Written Statement by engaging a counsel in the suit.

30. It is an admitted case of both the parties that the counsel engaged by the Defendants originally by name Sri Jayanta Prasad Deb had filed a petition on 09.12.2022 praying for exemption from conducting the trial on the pretext that he was unable to communicate with the Defendants for a long time, and the same was allowed on 01.02.2023. In that order, the trial court directed the plaintiff's side to file requisites for issuing summons upon the Defendants within three days, and the matter was adjourned to 20.03.2023.

31. Though this direction of the trial court to send summons was not carried out by plaintiff by paying process fee, the trial Court on 20.03.2023 ignored his lapse and stated that the defendants had already filed a Written Statement, so they have to be set *ex parte* and the suit will proceed *ex parte*. It directed the plaintiff to lead evidence and produce his witnesses. It characterised its previous order dt.01.02.2023 as one made inadvertently.

32. After considering the evidence adduced by plaintiff, it then passed the ex-parte decree on 22.08.2023.

33. After the ex-parte decree was passed on 22.08.2023, the defendants filed an application being Civil Misc.86/2024 under Order IX Rule 13 CPC in 2024 itself along with an application for condonation of delay of 15 months and 27 days in filing the Order IX Rule 13 petition being Civil Misc. (Condo) 12 of 2024.

The said applications were considered on 21.06.2025 by the Trial Court, and orders were passed dismissing them on 21.06.2025 itself.



34. The filing of these applications and pursuing of the same diligently by the defendants should have been taken note of by the District Judge while considering the application under Section 5 of the Limitation Act, 1963 i.e. in Civil Misc (Condo) 19 of 2025. There is no reference to this in his order to this aspect, though it was part of the trial court record.

35. No doubt under Art.120 of the Limitation Act, 1963, legal representatives of a deceased Defendant should be brought on record within 90 days from the date of death of the said Defendant.

36. But we have to also take note of Art.121 of the Limitation Act, 1963 which states that application to set aside abatement can be filed within 60 days of abatement of suit or appeal.

37. When Art.120 and Art.121 of the Limitation Act, 1963 are considered together, it is clear that if during the pendency of a suit/appeal, a party dies, his/her legal representatives should be brought on record within 90 days of death. If not, the suit/appeal abates.

38. Though abatement of the suit or appeal occurs, there is still time of 60 days to seek to set aside the said abatement under Art.121. If they file the application for substitution as legal representatives of deceased party *before* the expiry of this 60 day period, though after 90 days from date of death, they need not file an application under Section 5 of the Limitation Act, 1963 seeking to set aside abatement.

39. But if they were to file the substitution application *after* this 60 days period expires (from the date of abatement), the legal representatives may also have to seek condonation of delay in seeking to set aside abatement i.e. in such a case they may need to file 3 applications:



(i) application for condonation of delay in seeking to set aside abatement;

(ii) application to set aside abatement;

(iii) application to substitute them in place of the deceased party.

40. Admittedly the second Defendant, who was appellant No.2 in Title Appeal 19 of 2025, had died on 20.08.2025. The 90 day window to file application to substitute the legal representatives ended on 20.11.2025. On that date, the TA had abated.

41. But on 26.11.2025, a mere 6 days after the TA abated, *and before the expiry of 60 day period from 20.11.2025*, the application under Order XXII Rule 4 had been filed by the legal heirs of the second Defendant Lt. Narayan Saha in the said TA.

42. There was thus no necessity for the legal representatives of deceased second defendant to file an application under Section 5 of the Limitation Act, 1963 for any purpose at all.

43. The District Judge, while dismissing the Civil Misc. (Condo) 19 of 2025 erred gravely in presuming that the legal representatives of deceased – second defendant should file an application under Section 5 of the Limitation Act, 1963 to condone delay in filing the substitution application. There is no such requirement of law.

44. Moreover in some circumstances the Supreme Court has held that the very filing of an application for substitution of legal representatives ought to be treated also as an application to set aside abatement and that the prayer for the latter relief may even be implied.



45. The Supreme Court in *Mithailal Dalsangar Singh & Others v. Annabai Devram Kini & Others*¹ had held that since abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly; on the other hand the prayer for setting aside an abatement and the dismissal consequent upon abatement, have to be considered liberally.

It held that a simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement.

According to the Court, so also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety.

It held that though abatement of the suit for failure to move an application for bringing legal representatives on record within the prescribed period of limitation of 90 days is automatic, and a specific order dismissing the suit as abated is not called for, if a prayer is made for bringing the legal representatives on record, if such application is allowed, it would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words, is in effect being actually asked for and is necessarily implied.

It held that courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a *lis* determined on merits unless he has,

¹ (2003) 10 SCC 691



by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court.

46. This was again reiterated in a judgment of the Supreme Court in *Om Prakash Gupta alias Lalloowa (now deceased) & Others v. Satish Chandra (now deceased)*².

47. The dismissal of the Civil Misc (Condo) No.19 of 2025 by the District Judge for the reason that the legal representatives of deceased second defendant did not file an application under Section 5 of the Limitation Act, 1963 to condone delay in filing the substitution application is patently illegal and amounts to refusal to exercise jurisdiction vested in the District Judge and warrants interference under Art.227 of the Constitution of India with the said order.

48. Had the said application for substitution filed by the legal representatives been allowed by the District Judge by following the above decisions, the abatement of the TA would have been automatically set aside.

49. Further, it has also been held by the Supreme Court in *Baswaraj v. LAO*³ and in *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (dead) by Lrs and Others*⁴, held that the words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant. The decisive factor in condonation of delay is not the length of delay, but sufficiency of a satisfactory explanation.

² AIR 2025 SC 1201

³ (2013) 14 SCC 81

⁴ (2008) 8 SCC 321



50. I shall now deal with other reasons assigned by the learned District Judge.

51. There is no dispute that both the appellants in Title Appeal 19 of 2025, were during the pendency of the suit, senior citizens and one of them is alleged to be of unsound mind. Their counsel had withdrawn from the case in the trial court and it is contended that he did not contact them and inform them about it, and consequently, they were not aware that they were set ex-parte and later ex-parte decree was passed.

52. They filed application under Order IX Rule 13 CPC with delay and that was also dismissed on the ground that first defendant had filed it through his son and it was not accompanied by an application under Order XXXII CPC.

The fact that the second defendant was alive and was also a party in the said application was not noticed while dismissing the said application by the trial Court.

53. The suit/appeal involves substantial stakes as reliefs of declaration of title to immovable property and recovery of possession have been sought by plaintiff against the defendants.

54. While it is true that there is a website on which litigants are expected to verify stages of their cases, persons who are not technologically savvy like senior citizens in the instant case, cannot be penalised for not doing so.

55. I am therefore of the opinion that the defendants were victims of circumstances and it cannot be said that they had adopted dilatory tactics, that they are wanting of bona fides or guilty of deliberate inaction or negligence. It



would be travesty of justice to deny them even one opportunity to contest the matter on merits in the facts and circumstances of the case.

56. In *Radhey Shyam v. Chhabi Nath*⁵, the Supreme Court had held that despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected.

57. This was reiterated in *K.P. Natarajan v. Muthalammal*⁶, where it was held that in a Revision arising out of dismissal of a petition under Section 5 of the Limitation Act, 1963, the High Court can exercise powers under Art.227 of the Constitution of India and even set aside the ex-parte decree in a suit.

58. For the aforesaid reasons, I hold that the points framed above have to be answered in favour of the defendants/petitioners/appellants and the order passed by the learned District Judge, Gomati District, Udaipur on 26.11.2025 in Civil Misc. (Condo) 19 of 2025 in Title Appeal 19 of 2025, and the consequential order passed on the same day dismissing Title Appeal No.19 of 2025, cannot be sustained.

59. Accordingly, the order dt.26.11.2025 in Civil Misc. (Condo) 19 of 2025 in Title Appeal 19 of 2025 as well as the judgment dt.26.11.2025 in Title Appeal No.19 of 2025 are both set aside; the order dt.26.11.2025 of the learned District Judge, Gomati District, Udaipur dismissing the application filed for substitution by the legal heirs of the second Defendant Lt. Narayan Saha, is also set aside, and the said application is allowed and they shall be substituted in place of second defendant in the TA; the Civil Misc. (Condo) 19

⁵ (2015) 5 SCC 423

⁶ (2021) 15 SCC 817, at page 828



of 2025 is allowed; the TA 19 of 2025 is restored to the file of the District Judge, Gomati District; the said TA be decided on merits after hearing both sides by the said Court within 4(four) months from today. Pending decision in the TA, the proceedings in Ex (T) 01 of 2024 arising out of Title Suit 02 of 2021 on the file of the Civil Judge (Sr. Division), Udaipur, Gomati District shall remain stayed.

60. CRP No.14/2026 and RSA No.3 of 2026 are allowed accordingly.

(M.S. RAMACHANDRA RAO, CJ)

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