

GAHC040008762026

2026:GAU-AP:743



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

Case No. : CRP/48/2026

Kabak Bhatt
Son of Shri Kabak Taka, resident of F Sector, Naharlagun, PO and PS Naharlagun,
Papum Pare District, Arunachal Pradesh.

VERSUS

Ms Biki Shapiong
Daughter of Shri Biki Nido, resident of Mowb-II, Itanagar, PO and PS Itanagar,
Arunachal Pradesh.

Advocate for the Petitioner : Geken Jini,

Advocate for the Respondent : Tony Pertin, T Mize, H K Jamoh

**-BEFORE-
HON'BLE MR. JUSTICE PRANJAL DAS**

Advocate for the petitioner : Mr. T. Ete, Adv.

Advocate for the respondent : Mr. T. Pertin, Adv.

Date on which judgment is reserved : **29.07.2026**

Date of pronouncement of judgment : **07.08.2026**

Whether the pronouncement is of the
operative part of the judgment ? : N/A

Whether the full judgment has been pronounced?

: Yes

JUDGMENT & ORDER (CAV)

Heard *Mr. T.Ete*, learned counsel for the petitioner. Also heard *Mr. T. Pertin*, learned counsel for the sole respondent.

2. Invoking the constitutional jurisdiction under Article 227 of the Constitution of India, the civil revisional petitioner herein, namely, ***Shri Kabak Bhatt***, has assailed the judgment and order dated 18-05-2026 passed by the Learned District Judge, Yupia, whereby Civil (Misc.) Appeal No. 2 of 2025 against order dated 04-08-2025 passed by the Learned Civil Judge (Senior Division), Yupia was dismissed.

3. The facts in brief projected by the petitioner are that the petitioner and the sole respondent were husband and wife and during their stay together, acquired a plot of land measuring 49,066 Sq. mtrs and another plot of land measuring 47,961 Sq. mtrs at Hollongi at Balijan Circle. Subsequently, in 2010, the petitioner and the respondent separated and even thereafter, the petitioner was in peaceful possession of the land and he also constructed some house and boundary wall. It is further stated by the petitioner that in 2018, he successfully obtained a Land Possession Certificate vide LPC No. ADC/BJN/LPC-03/2014 dated 21-07-2018 for the plot measuring 47,961 Sq. mtrs and another Land Possession Certificate being LPC No. ADC/BJN/LPC-03/2014 for the other plot measuring 49,066 Sq. mtrs.

4. It is stated by the petitioner that upon the petitioner obtaining the land possession certificates, the respondent filed a complaint

before the Learned Additional Deputy Commissioner, Balijan alleging that the petitioner had fraudulently and dishonestly obtained the land possession certificates and pursuant thereof, the learned ADC, Balijan, vide Order dated 28-09-2023 recalled and cancelled the land possession certificates issued to the petitioner. Aggrieved by the same, the petitioner preferred a writ petition before this court which was registered and numbered as WP(C) No. 504/2023.

5. It is further stated by the petitioner that to his shock and surprise, he received the Mel notice dated 06-10-2023 from the Gaun Baura of Hollongi and another notice on 24-10-2023 which were issued based on a complaint made by the respondent. By the said notices, the petitioner was directed to appear before the Gaun Baura, Hollongi to adjudicate the dispute regarding the ownership of the land in question. Thereupon, the petitioner informed the Gaun Baura, Hollongi about the pendency of the matter in this Court.

6. However, the Gaun Baura, Hollongi in the absence of the petitioner passed order dated 24-10-2023, granting full rights ownership to the respondent over the disputed land. Aggrieved by the said order of the Gaun Baura, Hollongi dated 24-10-2023, the petitioner preferred an appeal under section 15 of the Arunachal Pradesh Civil Courts Act, 2021 before the Court of the learned Civil Judge (Senior Division), Yupia which was registered and numbered as Civil Appeal No. 5/2023. In the said appeal, he has prayed for setting aside the order dated 24-10-2023 passed by the village authority of Hollongi.

7. It is stated that the learned Civil Judge (Senior Division), Yupia

vide Order dated 04-12-2023 was pleased to stay the impugned Order dated 24-10-2023 passed by the village authority and directed both the parties to maintain status quo on the disputed land during the pendency of the appeal.

8. Subsequently, the matter was listed on 19-03-2024, 14-05-2024 and 09-08-2024 and due to absence of the petitioner's counsel on those dates, the matter came to be dismissed for default vide order dated 09-08-2024 and the interim Order dated 04-12-2023 was vacated.

9. The petitioner has contended that the counsel who was looking after the matter never informed him about the dismissal of the matter and he came to know about it when the respondents started undertaking some construction activities on the disputed land and having been left with no option, he filed an interlocutory application registered as IA No.07/2025 under Order 41 Rule 19 CPC read with section 151 CPC through a new counsel for condonation of a delay of 123 days and for restoration of the appeal dismissed for default. However, the learned First Appellate Court being the Court of the Learned Civil Judge (Senior Division), Yupia dismissed the said interlocutory application vide order dated 04-08-2025.

10. Aggrieved by the said dismissal, the petitioner then preferred a Miscellaneous appeal under section 104 read with Order XLIII Rule 1(t) before the Court of the learned District Judge, Yupia within the stipulated time and the said appeal was numbered as Civil (Misc). Appeal No. 2 of 2025. In the said appeal, he prayed for restoration of his first appeal and condonation of the delay of 123

days.

11. However, the Learned District Judge was also not persuaded to pass order in favour of the petitioner and the Misc. Appeal came to be dismissed vide order dated 18-05-2026. Aggrieved by the said dismissal of the Misc. Appeal, the petitioner has preferred the instant revision invoking the powers under Article 227 of the Constitution of India.

12. The sole respondent of the case is *Ms. Biki Shapiong*.

13. The case records were called for and received from both the Court of the learned Civil Judge (Senior Division), Yupia as well as from the Court of the Learned District Judge, Yupia.

14. I have perused the relevant materials and considered the rival submissions. I have also considered the decisions cited at the Bar.

15. In the case of ***Rafiq and Anr Vs. Munshilal and Anr*** reported in ***(1981) 2 SCC 788***, the Hon'ble Supreme Court has laid down the principle that litigants should not suffer for lapses on the part of their counsel and noticed the practical reality that after engaging a lawyer, the party might be complacent that the lawyer will do the needful on his behalf. The relevant para 3 of *Rafiq* (supra) may be reproduced herein below:

"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look

after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not

responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr A.K. Sanghi.” (emphasis added)

16. In the case of ***Jonah Lalrempuia Vs. Lalhmuchhuaki*** reported in ***2025 Supreme (Gau) 700***, a co-ordinate bench of this court, after referring to decisions of the Hon’ble Supreme Court, also underlined this principle that litigants should not suffer due to negligence of their counsel and that the court must consider sufficient cause for delays with a justice-oriented approach. The co-ordinate bench of this court, *inter alia*, also referred to the case of ***S. Shivraj Reddy Vs. Raghuraj Reddy and Ors*** reported in ***2024 SCC OnLine SC 963***, to buttress this point. The relevant para 22 of the decision in *Jonah Lalrempuia* (supra), may be reproduced herein below:-

"22. *As already stated, the appellant was represented by his engaged counsel but due to certain miscommunication, the appellant remained unrepresented on four consecutive dates. It is true that a litigant even after engaging a counsel to represent him in the Court still ought to be vigilant about the proceedings before the Court and the status of the case but however, having accepted the brief of his client, the counsel concerned has taken the responsibility to act on behalf of his client. If the appointed counsel had failed to appear before the Court on the date fixed, his client under the given circumstance without being given an opportunity cannot be held to be accountable The Apex Court in *Raghu Raj* (supra) held that normally a party should not suffer on account of default or non-appearance of the Advocate. In the present case also, the learned Lower Appellate Court ought to have considered the fact that the default was on the part of the counsel and therefore should have proceed with the matter*

accordingly. The same having not been done, the impugned order in the considered view of this Court requires to be interfered with.” (emphasis added)

17. In the case of ***Neelav Chaliha Vs. Ditul Das & Ors*** reported in ***2018 (4) GLT 1184***, a co-ordinate bench of this court held that when a suit is dismissed for non-prosecution for failure to appear on a particular date, a satisfactory explanation is required to be given only for the date on which the counsel had not appeared and on which date the suit was dismissed for non-prosecution. The court also referred to the decision of ***Nazrul Islam Borbhuiya Vs. Yakub Ciddikie*** reported in ***2006 (3) GLT 828***. The relevant para 7, 8 and 9 of *Neelav Chaliha* (supra) may be reproduced herein below:-

"7. The second point which arises in this application is that when the suit was dismissed for non-prosecution vide order dated 2.5.16, whether the appellant is required to satisfy the Court as regards the previous non-appearance of the counsel. In this connection, this Court is of the view that a satisfactory explanation is only required to be given for the date on which the counsel had not appeared and on which date, the suit was dismissed for non-prosecution. In that respect, it is seen that the appellant has been able to demonstrate that on 02.05.2016, when the suit was dismissed for non-prosecution, the counsel was on leave and the name of the counsel is reflected in the Cause-list dated 02.05.2016 of this Court in the letter of absence column. As the previous conduct of the appellant on the previous dates was already condoned by the learned trial Court by not dismissing the suit on the previous dates even when the appellant was found absent on call. The conduct of the appellant on the previous dates cannot be examined for the purpose of restoration of the suit which was dismissed for default on 02.05.2016, as good and sufficient cause was shown for nonappearance on that date.

8. Under the circumstances, the learned trial Court is found to have committed a jurisdictional error to rely on the previous conduct of the counsel in the suit because the said conduct of the appellant for remaining absent on call was not under scrutiny of the learned trial Court on 02.05.2016.

9. Therefore, following the ratio laid down by this Court in the case of *Nazrul Islam Borbhuiya (supra)*, it is held that the learned trial Court could have exercised powers under Section 151 CPC, notwithstanding the application made under Order IX Rule 9 CPC and moreover, having seen that the non-appearance of the appellant on 02.05.2016 has been satisfactorily explained, this Court is inclined to set aside the impugned order dated 19.05.2017, passed by the learned Civil Judge No. 3, Kamrup (Metropolitan), Guwahati.” (emphasis added)

18. Upon perusing the impugned order, it appears that the learned court also took into account the previous default of appearance of the learned counsel representing the present petitioner. The petitioner has contended that he was unaware of the non-appearance of the learned counsel on the 3 (three) dates and the dismissal of the proceeding for non-prosecution and that he came to know about it only when the respondent started some activities on the concerned property. The petitioner has contended that thereafter, he took steps to engage the new counsel and eventually filed the petition for restoration. The petitioner has also tried to explain the delay in such circumstances.

19. The decision in ***Solim Manyu Vs. Benglum Manyu, CRP/21(AP)/2025*** and ***N. Balakrishnan Vs. M. Krishnamurty*** reported in ***(1998) 7 SCC 123***, would not come in the way of this revisional court approaching the matter in a justice-oriented

manner, keeping in mind the contentions of the petitioner and the principles laid down in the above discussed judgments.

20. Accordingly, the judgment and order dated 09.08.2024 passed by the learned Civil Judge (Senior Division), Yupia in First Appeal No. 05/2023 and the judgment and order dated 18-05-2026 passed by the Learned District Judge, Yupia in Civil (Misc.) Appeal No. 2 of 2025 and the order dated 04-08-2025 passed by the learned Civil Judge (Senior Division), Yupia dismissing IA No. 7/2025 – are **hereby set aside**. The delay of 123 days in filing the application for restoration of the appeal is also condoned.

21. The appeal before the learned Civil Judge (Senior Division), Yupia being First Appeal No. 05/2023, is hereby restored to file for fresh adjudication by the learned Civil Judge after giving new opportunities to both the sides, including the petitioner herein. However, due to the delay entailed in the process, the petitioner is directed to pay a cost of Rs. 5,000/- (rupees five thousand) to be deposited before the jurisdictional District Legal Services Authority i.e., DLSA, Papumpare, Yupia.

22. Both the parties shall appear before the Court of the learned Civil Judge (Senior Division), Yupia on 07.09.2026, for adjudication of the first appeal, being First Appeal No. 05/2023.

23. The civil revision stands allowed and disposed of on the aforesaid terms.

JUDGE