

HIGH COURT OF SIKKIM

Record of proceedings

C.R.P. No. 01 of 2026

MAITA KUMAR TAMANG @ MAITAY

..... PETITIONER

VERSUS

DAWA TAMANG

..... RESPONDENT

Date: 22.09.2026

CORAM :

HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

For Petitioner : Mr. Jorgay Namka, Senior Advocate (Senior Legal Aid Counsel) with Mr. Lahang Limboo, Advocate

For Respondent : Mr. Passang Tshering Bhutia, Advocate.
Ms. Pem Lhaki Tamang, Advocate.
Ms. Sangay Chokey Bhutia, Advocate.

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I.A. No.01/2025

1. This is to consider an application for condonation of delay filed under section 5 of the Limitation Act, 1963 for preferring the present civil revision petition under section 115 of the Code of Civil Procedure, 1908. Article 131 of the Limitation Act prescribes a period of 90 days for filing the revision against the decree or order or sentence sought to be revised from the date of the decree or order.

2. According to the applicant there is a delay of 107 days. The learned counsel for the respondent however, submits otherwise. He submits that in fact there is a delay of 197 days.

3. I have perused the application for condonation of delay as well as the additional affidavit on behalf of the petitioner. I have also heard the learned counsel for the respondent who submits that the application as well as the additional affidavit filed in support thereof, do not show sufficient cause for condoning the delay. It is argued that in the application there are certain facts interweaving the explanation which has not been highlighted or informed to this Court.

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4. The application for condonation of delay states that on 18.10.2024 the Title Suit No.09 of 2024 was transferred to learned Civil Judge (Senior Division) at Pakyong. It was listed on 14.11.2024 for appearance of the parties and on 02.12.2024 for filing of suggested issues/documents on which date the respondent instead of filing his suggested issues/documents, filed an application under Section 30, Order XI Rule 14 read with section 151 of the Code of Civil Procedure, 1908 (CPC). That the learned Civil Judge without calling for objection from the petitioner heard respondent's counsel and directed the petitioner to file his written objection on 10.12.2024. According to the petitioner, in the meantime the learned Legal Aid Counsel for the petitioner appointed by the Sikkim State Legal Services Authority recused from the case and in her place another counsel was appointed vide letter dated 07.12.2024. The said counsel could not appear on 10.12.2024 before the learned Civil Judge, instead the petitioner was represented by another counsel who filed the written objection on behalf of the petitioner.

5. On the said date, one Dhan Maya Tamang filed an application under Order I Rule 10(2) read with section 151 of the CPC which was posted on 19.12.2024 for filing of written objection by the petitioner. On 19.12.2024 the petitioner appeared through the new counsel. On the said date the learned Civil Judge allowed the application filed by the respondent under Section 30, Order XI Rule 14 read with section 151 of the CPC.

6. Aggrieved thereby the petitioner filed a transfer petition under section 24 of the CPC on 13.02.2025 before the learned District Judge, Pakyong seeking transfer of Title Suit No.09 of 2024. The learned District Judge however, could not transfer the case since there was only one Civil Judge under his jurisdiction. On 06.06.2025 the learned District Judge rejected the petition filed by the petitioner under section 24 of the CPC for transfer. Although unclear, it transpires that the petitioner had approached

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this Court as well for transfer i.e. Tr.P(C) No 02 of 2025 which was disposed of as withdrawn on 23.09.2025.

7. The communications from and to the Sikkim State Legal Services Authority filed along with the present application also reflects that there has been change of atleast two counsel during this process.

8. The above narration of facts reflects that the petitioner, on advice of the counsel, had taken various steps in the proceedings, primary amongst them was applying to the learned District Judge on 13.02.2025 for transfer of the case which was thereafter, disposed of on 06.06.2025 after which the petitioner approached this Court for transfer on 30.04.2025. The impugned Order sought to be challenged before this Court in the present revision is dated 19.12.2024. Thereafter from 13.02.2025 till 06.06.2025 the petitioner was pursuing a transfer petition before the learned District Judge and thereafter before this Court on 30.04.2025. The revision petition was thereafter filed on 05.07.2025. Therefore, the period between 13.02.2025 and 06.06.2025 are required to be excluded in view of section 12 of the Limitation Act.

9. It may be that the petitioner was not well advised to approach the learned District Judge and thereafter this Court for transfer of the case when ultimately what was required to be sought was a revision of the order passed and impugned herein.

10. It is settled law that the acts of the counsel to the prejudice of the client should not bind them in such a way that justice should suffer. Whether the act of the counsel for the applicant was right or wrong is a different issue but the fact of the matter is that certain acts were taken by the counsel which seems to have caused substantial delay. It is also settled law that while considering the application for condonation of delay a pedantic approach should be avoided and a more justice oriented view should be taken.

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11. I am therefore, of the considered view that justice would be better served if the delay is condoned and the revision petition is heard on merits. Delay is condoned. Accordingly, I.A. No.01/2025 is allowed and disposed of.

Judge

to/