THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No.01 of 2026
IN
CRP No. 05 of 2026

The Branch Manager,
National Insurance Company Limited,
Gangtok Division,
Registered Office at NH-10,
Near Police-Headquarter, Gangtok,
Gangtok District, Sikkim, 707101.

..... **Applicant**

Versus

Shri Yoel SUbba,
Son of Shri Anil Subba,
Resident of Upper Sadam,
P.S. Melli,
Namchi District, Sikkim, 737128.

..... **Respondent**

Application under Section 5 of the Limitation Act, 1963 of condonation of delay in filing the instant Revision.

Appearance:

Mr. Madan Kumar Sundas, Ms. Anita Limboo and Ms. Priyanka Subba, Advocates for the Applicant.

Mr. Tarun Choudhary Advocate for the Respondent (through V.C.).

Date of Hearing : 08.10.2026

Date of Order : 08.10.2026

Date on which uploaded : 08.10.2026

O R D E R (O R A L)

Bhaskar Raj Pradhan, J.

1. An application for condonation of delay of 223 days in preferring the present revision petition is placed for consideration before this court.

2. Heard Mr. Madan Kumar Sundas, learned counsel for the applicant as well as Mr. Tarun Choudhary, learned counsel for the respondent.

3. The application for condonation of delay was filed on 10.04.2026. A reply thereto was filed on 20.07.2026 by the respondent. On 27.08.2026 and 23.09.2026 the applicant filed further affidavits.

4. In the application for condonation of delay of 223 days the first part of the application the delay is attributed to the earlier counsel before the learned Trial Court. In the second part of the application the delay is explained in this fashion. It is stated that on 14.10.2025 the learned counsel presently arguing this case was approached by the applicant after the impugned order was passed on 30.08.2025 and as per the submissions of the learned counsel 176 days were taken to prefer the present revision petition. According to the application on being approached the learned counsel for the applicant received certified copies of the learned Trial Court record and impugned order only on the first week of December, 2025 from the applicant. He thereafter, went through the entire records and found that it was a tax matter which needed

detailed examination and therefore, he could file the revision petition only on 10.04.2026.

5. Further, it is also submitted that the officers of the applicant were on deputation for Special Intensive Revision (SIR) duty by the Government of West Bengal and therefore they were unable to verify and approve the draft revision on time which took them 50 to 60 days to verify and sign it.

6. Insofar as the reasons for delay attributed in the first part of the application blaming the earlier counsel the affidavit filed on 23.09.2026 states this:

> **"2.** That this Hon'ble Court, vide orders dated 13.08.2026 and 02.09.2026, was pleased to direct the Revisionist to explain the averment made in paragraph 2(c) of the application for condonation of delay regarding the alleged ill-health of the learned Trial Court Counsel, Shri. Sailesh Rai.
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> **3.** That the said averment regarding the ill-health of Shri Sailesh Rai was inadvertently and incorrectly incorporated due to a communication gap/miscommunication and was not based on any statement made by the learned counsel that he was ill.
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> **4.** That upon verification, Shri Sailesh Rai, by his email, clarified that he was not ill and that the reference to his ill-health in the application was not communicated by him.
>
> **5.** That the Revisionist Company, upon realizing the mistake, has sincerely and unconditionally apologized to Shri Sailesh Rai, through email dated 03.09.2026 and he has acknowledged the said apology through email dated 04.09.2026. A computer printout of the aforesaid email is annexed hereto and marked as Annexure-1(colly).
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> **6.** That the Revisionist Company hereby withdraws the said averment regarding the

> ill-health of Shri Sailesh Rai and respectfully tenders its unconditional apology before this Hon'ble court for the said inadvertent error. The Revisionist has no intention whatsoever to mislead this Hon'ble Court.
>
> **7.** That the Revisionist further assures this Hon'ble Court that due care and caution shall be exercised in future to avoid any such communication error.**"**

7. The affidavit is self explanatory, the entire allegation against the previous counsel stands withdrawn. Consequently, the only explanation available before this Court seeking condonation of delay of 223 days is the explanation relating to the present counsel. The explanation reflects lethargy and failure on the part of the applicant which is wanting. The explanation that the officers were involved in the SIR process of West Bengal as deputed lacks in material particulars or records to support this. It could be true. It may not be true as well. The affidavit dated 23.09.2026 reflects that the application filed earlier for condonation of delay was made on false pleas which was thereafter, withdrawn. The question before this Court is therefore should the delay be condoned? Although this Court is of the opinion that it is always better to decide the case on merits than to defeat its purpose by not condoning the delay, the facts in the present case is wanting.

8. In matters pertaining to condonation of delay a justice oriented approach is required to be taken avoiding a pedantic approach.

9. A proper appreciation of the pleadings in the application for condonation of delay makes me believe that it was more on error of judgment of the draftsman to draft the application in the manner.

Blaming a counsel who was previously engaged without a proper verification on the part of the applicant is a serious matter. This was incorrect and not appreciated. It should be avoided. It is also clear that the litigants should be conscious about their rights and approach the Courts in time.

10. On the overall picture as it emerges after perusing the application for condonation of delay as well as the other two affidavits and the reply by the respondent I am inclined to condone the delay for a justice oriented approach giving an opportunity to the applicant to argue the case on merits. However I am of the considered view that the applicant must pay a cost of Rs.50,000/- within a period of two weeks hence. The amount shall be deposited with the Sikkim State Legal Services Authority which shall be utilised for the purpose of rehabilitation of the POCSO victims of sexual assault. A compliance affidavit shall follow. Accordingly, the I.A. No.01 of 2026 is allowed and the delay is condoned.

(Bhaskar Raj Pradhan)
Judge

to