

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, PATNA

MISCELLANEOUS CASE No.141 OF 2025

Smt. Veena Mishra @ Veena

Petitioner

Vs.

The Estate of Baidnath Mishra

Opposite Party

**Order
No.**

Date

ORDER

6 18-03-2026

1. Record placed for orders on the point of admission and limitation.
2. The present Miscellaneous case has been initiated under Order IX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 for restoration of Probate Case No.103 of 2018 to its original file, which has been dismissed for continuous non-appearance.
3. Heard Sri Mrityunjay Kumar, learned counsel for the petitioner.
4. As per the Sheristedar's report, there is a delay of 2153 days in the institution of the Miscellaneous case.
5. The learned counsel appearing for the petitioner has submitted a petition for condonation of delay dated 27.01.2026 under Section 5 of the Limitation Act. It was contended that the petitioner had filed Probate Case No.103 of 2018 for granting of probate certificate on the basis of will executed by her husband Late Baidnath Mishra. It is next submitted that the son and daughter of the petitioner lives outside Patna. Thus, the petitioner after filing the case, engaged Sri Sachidanand Sinha as pairvikar of the case, who was an Advocate Clerk and he ensured the petitioner that he will do proper pairvi of the case. Therefore, the petitioner handed over the original will, death certificate as well as duty money and the pairvikar accordingly filed the Challan on 12.09.2018. However, later on the said pairvikar fell ill. He further

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contended that during corona pandemic period, the petitioner suffered from several types of diseases and after recovery she came in the Court on 11.11.2025 and after enquiry she found that the said pairvikar has died on 06.10.2019. Thereafter, she procured the entire file from the pairvikar's residence and came to know that only Challan has been filed in the Court whereas death certificate and Will are yet to be filed. Then the petitioner engaged Sri Mritunjay Kumar, learned Advocate on 15.11.2025, who filed inspection slip on the same day and inspected the record on 09.12.2025. Thereafter, on 10.12.2025, petitioner filed requisition for obtaining the certified copy of order dated 11.12.2019, which was supplied to her on 12.12.2025 and thereafter she has filed the present miscellaneous case. Lastly, it was urged that there was no deliberate delay or negligence on the part of the petitioner, and that non-admission of the miscellaneous case would cause her grave and irreparable harm. Accordingly, prayer was made for condoning the delay in filing the present proceedings and for its admission in the interest of justice.

6. Perused the record. From perusal of the materials available on record, it appears that the probate case was dismissed for continuous non-appearance on 11.12.2019 and the present Miscellaneous case for restoration of the same has been filed on 20.12.2025. According to the Sheristedar's report, there is a delay of 2153 days in filing the present case.
7. A petition seeking condonation of delay has been submitted on behalf

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of the petitioner, wherein it has been asserted that the petitioner was under the impression that the pairvikar of her case was doing proper pairvi, who unfortunately died on 06.10.2019, about which she came to know on 11.11.2025 and due to this reason, the said probate case got dismissed due to no fault on the part of the petitioner. The petitioner has further taken plea with regard to her illness stating that she was suffering from various health related problems during the covid 19 pandemic period, though no document in this regard has been filed by the petitioner. It is further evident that the requisition for obtaining certified copy of the order was itself filed on 10.12.2025, i.e. after a lapse of much time.

8. From perusal of the order dated 11.12.2019 passed in Probate Case No.103 of 2018, it further transpires that the said probate case was dismissed for default when the petitioner did not appear for arguing on the point of admission on numerous dates.
9. Accordingly, the grounds advanced by the petitioner do not constitute 'sufficient cause' within the meaning of Section 5 of Limitation Act, 1963, to warrant condonation of the delay. Consequently, it is evident that there was laches on the part of the petitioner in initiating the present proceedings after a lapse of 2153 days.
10. Further, the Hon'ble Apex Court vide judgment dated 13.05.2025 passed in **Thirunagalingam vs. Lingeswaram & Anr. in Civil Appeal arising out of SLP (c) No.17575 of 2023** has observed thus:-

"32. Further, this Court has repeatedly emphasized in several cases

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that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

11.In view of the foregoing facts and circumstances, and in the absence of ‘*sufficient cause*’ within the meaning of Section 5 of Limitation Act, 1963, to justify the delay in filing the present Miscellaneous Case, being time barred, stands dismissed at the threshold.

(Dictated)

**Sd/-
(Rupesh Deo)
Principal District Judge,
Patna**

Date of Judgment/Order	18.03.2026
Date of Reserving Judgment/ Order	21.02.2026
Uploading Date	19.03.2026
Uploaded by	Abhishek/-