

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, SITAMARHI
Dated, Sitamarhi, the 19th June 2026
Present- AKHILESH KUMAR JHA, Principal District Judge, Sitamarhi
Misc. Case No.04/2025

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1. Priti Kumari W/o Late Ganesh Kumar
 2. Krish Kumar
 3. Srishti Kumari
 4. Mania Kumari
- Minor son and daughters of Late Ganesh Kumar under guardianship of her mother the applicant no.1 Priti Kumari
All the resident of Village- Bari Bazar, Janki Asthan, Ward No.8, P.S. & District- Sitamarhi.
At present resident of Village- Bhagwanpur, Ward No.11, P.S. & District- Vaishali.

.....Applicants

Vrs.

1. Ravi Kumar S/o Shankar Prasad
R/o Village-Bari Bazar, Janki Asthan, Ward No.8, P.S. & District- Sitamarhi.

.....Opposite Party

Appearance:

For the applicant	: Sri Arun Prasad, Ld. Advocate
For the Opposite Party	: None

ORDER

1. The applicants, Priti Kumari and others, have filed the present Miscellaneous Case under Order IX Rule 4 read with Section 151 CPC seeking restoration of L.A. Case No. 03/2012, which was dismissed for default on 28.03.2017.

2. The present present Miscellaneous Case was instituted on 31.01.2025 with a delay of 2,929 days and was admitted on 21.02.2025 without adjudication of the limitation petition. Despite service of notice and publication, the opposite parties failed to appear and the case proceeded ex-parte vide order dated 15.11.2025. Thereafter, three witnesses were examined on behalf of the applicants.

3. The applicants have made averments that the original applicant of L.A. Case No. 03/2012, Ganesh Kumar, died of cancer on 25.03.2018. Due to the failure of the advocate's clerk to properly pursue the matter and Applicant no 2 of L.A. Case No. 03/2012, Ravi Kumar left to look after the case because he had no interest, no effective pairvi was made in said case.

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4. It is further stated that Applicant No. 1 of the present Miscellaneous Case, Priti Kumari, came to Court on 05.01.2025 but was not informed about the status of the case by the advocate's clerk. According to the applicants, they came to know about the dismissal of L.A. Case No. 03/2012 only on 15.01.2025 through an information petition, whereafter they obtained a certified copy of the order and filed the present Misc Case for restoration of L.A. Case. It is submitted that the delay in filing the Misc Case for restoration of L.A. Case, is neither intentional nor deliberate and deserves to be condoned in the interest of justice.

5. Heard learned counsel for the applicants and perused the case record.

6. The order sheets of L.A. Case No. 03/2012 reveal that on several consecutive dates fixed for hearing, neither the applicants nor their counsel appeared to pursue the case and only time petitions were being filed. Ultimately, on 28.03.2017, when no one appeared on behalf of the applicants despite repeated calls, the case was dismissed for non-prosecution.

7. As per Article 122 of the Limitation Act, an application for restoration of a case dismissed for default is required to be filed within thirty days from the date of dismissal. Admittedly, the present application has been filed after a delay of 2,929 days, i.e., more than seven and a half years of dismissal of L.A. Case No. 03/2012. Therefore, the applicants are required to establish sufficient cause for condonation of the entire period of delay under Section 5 of the Limitation Act .

8. The main ground taken by the applicants for condonation of delay is that they had no knowledge of the dismissal order of L.A. Case No. 03/2012 until 15.01.2025. However, it is not their case that they were unaware of the pendency of L.A. Case No. 03/2012. On the contrary, it has been contended by applicants that that applicant no 1 suddenly came to court on 05.01.2025 to contact advocate's clerk who was making pairvi in L.A case. They have also stated that Ravi Kumar (applicant no.2 of L.A case) left to look after case. Thus it is evident that the applicants were aware of proceedings of L.A. case, which is also apparent from the fact that applicant no 1 came to court to inquire about the status of case.

In such circumstances, even if the pleas regarding the death of Ganesh Kumar, negligence of the advocate's clerk not making proper pairvi and allegation that applicant no. 2 of L.A. Case No. 03/2012, Ravi Kumar left to look after the case due to lack of interest are accepted, the applicants have failed to explain what prevented them from making any inquiry regarding the status of their case from 2018, after death of Ganesh Kumar, till January, 2025, when applicant no.1 Priti Kumari came to inquire about L.A. case. The limitation petition as well as Misc case petition are completely silent regarding the prolonged period of inaction of about seven years. Neither, advocate's clerk who was making parvi in L.A case nor Ravi Kumar, Applicant no 2 of L.A. case has been examined by applicants in support of their assertions. Apart from applicant no.1 Priti Kumari, only her father and one neighbour examined in the case in support of averments of this Misc case, who have not deposed as to why, for seven years restoration petition for L.A. case was not filed. Mere averments of lack of knowledge and negligence of the advocate's clerk, unsupported by cogent and convincing evidence, cannot constitute sufficient cause for condonation of such an extraordinary delay.

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9. It is well settled law that although courts may adopt a liberal approach while considering petition for condonation of delay, the applicant must furnish a satisfactory explanation covering the entire period of delay. In the present case, no such explanation has been offered. The applicants have failed to establish sufficient cause for condonation of the inordinate delay of 2,929 days. They also failed to establish sufficient cause of their non appearance on 10 consecutive dates, when L.A. case 03/12 was called on for hearing.

10. Accordingly, the petition under Section 5 of the Limitation Act for condonation of delay is dismissed. Consequently, Miscellaneous Case No. 04/2025, filed under Order IX Rule 4 read with Section 151 CPC for restoration of L.A. Case No. 03/2012, also stands dismissed as barred by limitation.

11. The Miscellaneous Case is accordingly disposed of. Let the record be consigned to the Record Room.

Dictated

Sd/-

Principal District Judge,

Sitamarhi

19/06/2026