

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, SITAMARHI
Present:- Akhilesh Kumar Jha, P D J, Siatamrhi

Partition Appeal No. 02 of 2025

Jibachh Thakur & Anr. ... Appellants
Versus
Dinesh Thakur & Ors. ... Respondents

Order Date:- 07-08-2026

On the petition under Section 5 of the Limitation Act

1. The appellants seek condonation of delay in filing the appeal against the judgment dated **23.08.2018** and preliminary decree dated **05.09.2018** passed in Partition Suit No. 31 of 2017 by the Ld. Court of Sub-Judge-I, Sitamarhi.

2. The case of the appellants is that respondent no.10, Lalbabu Thakur, obtained their signatures/thumb impression on a blank Vakalatnama on the pretext of contesting the suit. Respondent no.10 got said Vakalatnama signed by advocates, Sri Ajay Chandra Jha and Sri Ajay Bhushan Jha and utilized the same in PS Case No. 31/2017, in favour of respondent Ist party. The appellants never engaged said advocates to contest the partition suit on their behalf. Subsequently, respondent no. 10 informed appellants that the suit had been dismissed for default. According to the appellants, they acquired knowledge of the decree only on **20.07.2022** after hearing rumor about the execution proceeding, whereupon they obtained certified copies and filed the present appeal. They have also sought benefit of the orders of the Hon'ble Supreme Court, whereby limitation period during the COVID-19 pandemic was extended. Further case of appellants is that delay in filing the appeal was not deliberate and there was no negligence or laches in filing the appeal from the date of knowledge of judgment and decree of the partition suit 31/2017. Hence, the appeal is within time.

3. Appellant relied upon following judgments/orders:

- i. State of Bihar Vs. Kameshwar Prasad Singh reported in 2003 PLJR (SC) 81.
- ii. Mool Chandra Vs. Union of India & Anr. reported in 2024 SAR Online (SC) 560.

iii. Panwati Devi & Others Vs. Nirakhni Devi & Others reported in 2005 (1) PLJR 583.

iv. Ramautar Sah Vs. State of Bihar & Others reported in 1978 BBCJ page- 222.

v. Life Insurance Corporation of India & Others Vs. Sheo Pujan Prasad reported in 2005 (3) PLJR Page- 401.

vi. Order dated 10th January, 2022 passed by Hon'ble Supreme Court in Miscellaneous application no. 21 of 2022 in Miscellaneous application no. 665 of 2021 in *suo-motu* writ petition (C) no. 3 of 2020.

4. Notice of this appeal was issued to respondents and vide order dated 14.2.2025 service of notices upon respondent nos. 2 to 31 were confirmed and only respondent no. 1 appeared in the case, who filed rejoinder to the petition dated 4.8.2022 for condonation for delay in filing the present appeal.

5. The respondent no.1 in his rejoinder dated 10.01.2025 stated that the petition for condonation of delay dated 4.8.2022 under section 5 of the Limitation Act, filed by the appellants is not maintainable and liable to be dismissed. It is further averred that petition contains wrong and incorrect facts, hence, it is fit to be dismissed. It is further averred that the appellants had duly executed Vakalatnama in favour of their advocates and had appeared in the suit through them by filing a time petition for filing written statement. The appellants are full brother and sister and they had knowledge of PS Suit No. 31/2017 and they jointly executed Vakalatnama in favour of advocates Ajay Chandra Jha and Ajay Bhushan Jha. The other defendants no. 10, 12 to 14, 16 and 17 had also filed separate Vakalatnama along with petition for time in the PS No. 31/2017 through advocates Sri Ajay Chandra Jha and Sri Ajay Bhushan Jha. Defendants no. 2,3,4, 6,9 and 25 jointly filed separate Vakalatnama through their advocate Sri Ramesh Chandra Jha. The appellant no. 1 Jiwachh Thakur is educated man and he passed middle board examination fifty years ago. Therefore, allegation of fraud and misuse of blank Vakalatnama are false, unsupported by any material

and contradicted by the records of the trial court. The appellants have full knowledge of P.S No. 31/2017 and the judgment and decree dated 23.8.2018 and 5.9.2018, respectively, passed in the proceeding and they have concocted the false story of knowledge of the decree in the case on hearing rumor on 20.7.2022.

6. The limitation period for filing appeal is to be counted from the date of judgment dated 23.8.2018 and order of Hon'ble Apex Court with regard to exemption for limitation started on 15.3.2020, which would not apply in present appeal as limitation for preferring appeal expired on 24.9.2018 and thereafter, appeal became time barred. The limitation once started shall continue to run and not intervened by subsequent events. The appeal filed on 17.8.2022 is barred by three years, ten months and nineteen days. The appellants cannot take advantage of obtaining certified copy of judgment and decree passed in P.S. Case No. 31/17 on 22.7.2022. The appellants failed to show sufficient cause for not filing the appeal within time and for condonation in the delay. Accordingly, it is prayed that the petition for condonation of delay in filing the appeal and appeal is liable to be dismissed.

7. Respondents relied upon following rulings/orders :

- i.** Union of India & Another Vs. Jahangir Byramji Jeejeebhoy (D) through his LR reported in [2024] SCCR 522.
- ii.** H. Guruswamy & Ors. vs A. Krishnaiah reported in [2025] SCCR 294.
- iii.** Pathapati Subba Reddy vs. The Special Deputy Collector, reported in [2024] SCCR 580.
- iv.** Union of India vs. Pintu Kumar Singh reported in 2023 (3) BLJ Page-511.

8. Heard learned counsel for the parties on the petition filed under Section 5 of the Limitation Act.

9. Perusal of records shows that even as per appellants version, they signed/ gave thumb impression on Vakalatnama for contesting the suit and gave the same

to respondent No. 10. However, appellants alleged that respondent No.10 took signatures of advocates, namely, Sri Ajay Chandra Jha and Ajay Bhushan Jha on Vakalatnama and utilized the same in P.S. No. 31/2017, in favour of respondent 1st party. The appellants have also made averments in petition for condonation of delay that they were told by respondent no. 10 that suit was dismissed for default.

10. However, the petition for condonation of delay filed by appellants is conspicuously silent as to the date on which such information was allegedly conveyed to the appellants. The appellants have also nowhere stated in the petition that, if they had not signed or affixed their thumb impressions on the Vakalatnama in favour of the advocates, namely, Sri Ajay Chandra Jha and Sri Ajay Bhushan Jha, then in whose favour they had executed the Vakalatnama. Nor have they stated whether, at any point of time, they contacted the advocates in whose favour they claim to have executed the Vakalatnama. The appellants have also failed to mention that they ever verified the court records or made any inquiry before the court regarding the status of the suit. Such prolonged inaction on the part of the appellants is wholly inconsistent with the conduct expected of reasonably prudent litigants.

11. The plea that appellants had no knowledge of judgment and decree till July, 2022 does not inspire confidence, in view of the specific assertion by appellants that they had executed Vakalatnama. Ordinarily, a person executing a Vakalatnama is presumed to have authorized the advocate to represent him. The allegation that respondent no. 10 obtained signature/thumb impression on a blank Vakalatnama is a serious allegation of fraud and misrepresentation but same has not been supported by any independent evidence or any complaint against respondent no. 10 or advocates before Bar Council, police or any competent authority. An allegation that signatures or thumb impressions were obtained on a blank Vakalatnama, amounting to fraud or misrepresentation, may in an appropriate case constitute sufficient cause under Section 5 of the Limitation Act. However, such an allegation must be supported by specific pleadings and credible material. A bald or unsubstantiated allegation, without any supporting

evidence, is insufficient for condonation of delay. In present case, appellants failed to furnish any supporting evidence to substantiate their allegation of fraud and misrepresentation.

12. Further, vide order dated 10.01.2022, passed in, In Re; “Cognizance for extension of limitation”, Hon’ble Supreme Court directed for exclusion of the period from 15.03.2020 till 28.02.2022. The orders of the Hon’ble Supreme Court extended only the subsisting period of limitation and did not revive limitation that had already expired prior to 15.03.2020. Present appeal was filed on 17.08.2022 against Judgment and preliminary Decree dated 23.08.2018 and 05.09.2018, respectively. Time taken in obtaining the certified copy of Judgment is two days, and limitation for filing appeal was 30 days from the date of judgment. Therefore, Limitation for filing appeal expired on 24.09.2018, much before 15.03.2020. Consequently, the benefit of the orders of the Hon’ble Supreme Court extending limitation during the COVID-19 pandemic is not available to the appellants. Obtaining certified copies in July, 2022 also does not revive a limitation which had already expired.

13. Therefore, in the present case, the judgment was pronounced on 23.08.2018, and the appeal was filed on 17.08.2022. The total period between the date of the judgment and the date of filing of the appeal is 1,449 days. The appellants are entitled to exclusion of 2 days spent in obtaining certified copies under Section 12 of the Limitation Act, 1963. The prescribed period of limitation for filing the first appeal is 30 days, the delay is computed as follows:

1,449 days – 2 days – 30 days = 1,417 days.

Accordingly, there is a delay of 1,417 days in filing the appeal.

14. This Court has carefully considered the judgments relied upon by the appellants. However, the facts of those decisions are distinguishable and the principles laid down therein do not advance the case of the appellants in the facts and circumstances of the present case.

15. On consideration of the pleadings, submissions and materials on record, this Court finds that the appellants have failed to establish sufficient cause for condonation of the inordinate delay of 1417 days in filing the appeal. They have neither furnished a satisfactory nor a Bonafide explanation covering the entire period of delay. The explanation offered does not inspire confidence and does not demonstrate that, despite exercising reasonable diligence, they were prevented by sufficient cause from preferring the appeal within the prescribed period. The delay is attributable to their own inaction and lack of due diligence rather than to circumstances beyond their control. Consequently, no ground exists for exercising discretion under Section 5 of the Limitation Act.

16. Hence, the petition under Section 5 of the Limitation Act is rejected.

17. Consequently, the appeal, being barred by limitation, is also dismissed as time-barred.

18. Let the record be consigned to Record Room after due compliance.

Dictated

Sd/-

Prin. Distt. Judge,
Sitamarhi
07-08-2026

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