



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

I.A. No.75 of 2026
(Arising out of RVWPET No.47 of 2026)

(In the matter of an application vide I.A. No.75 of 2026
under Section 5 of the Limitation Act, 1963)

Birabar Behera ***Petitioner/Appellant***

-versus-

Akshaya Kumar Nayak ***Opposite***
Parties/Respondent

Appeared in this case:-

For Appellant : Mr. M.K. Mohanty, Advocate

For Respondent : Mr. S. Pattanaik, Advocate

CORAM:

JUSTICE A.C. BEHERA

JUDGMENT

Date of hearing : 18.03.2026 / date of judgment : 23.03.2026

A.C. Behera, J. This Interlocutory Application under Section 5 of the Indian Limitation Act, 1963 has been filed by the petitioner praying for condonation of delay of nineteen years one month and twenty-four days in filing RVWPET No.47 of 2026 under Section 114 read with Order-47, Rule-1 of the C.P.C., 1908.

The RVWPET No.47 of 2026 has been filed by the petitioner praying for the review of the order dated



15.11.2006 passed in RSA No.317 of 2006 by this Court stating in his petition that, at the time of passing of the said order on dated 15.11.2006 in RSA No.317 of 2006 by this Court, he(petitioner) had no knowledge about the obtaining of the decree in RFA No.12/26 of 2006/2003 by the Opposite Party in his favour by practising fraud, but, subsequently, he(petitioner) came to know about the same on dated 03.03.2022. After knowing about the same, he(petitioner) filed CMA No.5 of 2022 under Section 47 of the C.P.C., 1908 in the court of learned Civil Judge(Sr. Division), Koenjhar in Execution Case No.11 of 2008 praying for non-prosecution of that Execution Case No.11 of 2008 further and to drop that Execution Case No.11 of 2008, but, the Executing Court dismissed to that CMA No.5 of 2022 of the petitioner.

To which, the petitioner challenged by filing CRP No.02 of 2024 before the learned District Judge, Keonjhar, but, the learned District Judge, Keonjhar dismissed to that CRP No.02 of 2024 of the petitioner.

Then, he(petitioner) challenged that dismissal order passed in CRP No.02 of 2024 by filing CMP No.1526 of 2025



before the High Court, but, that CMP No.1526 of 2025 of the petitioner was dismissed on 11.12.2025 by this Court.

Thereafter, the petitioner filed REVWPET No.47 of 2026 before this Court under Section 114 read with Order-47, Rule-1 of the C.P.C., 1908 in delay along with this I.A. vide I.A. No.75 of 2026 under Section 5 of the Indian Limitation Act, 1963 praying for condonation of delay of nineteen years one month and twenty-four days in filing that REVWPET No.47 of 2026 stating that, the aforesaid delay may not be taken into account, as he(petitioner) has filed REVWPET No.47 of 2026 alleging fraud against the Opposite Party, for which, the same may be condoned for the ends of justice. Because, delay in filing the REVWPET No.47 of 2026 by him(petitioner) is neither intentional nor deliberate, therefore, the said delay in filing the REVWPET No.47 of 2026 may be condoned. If the above delay in filing REVWPET No.47 of 2026 will not be condoned, he(petitioner) will suffer irreparable loss as well as substantial injury.

To which, the Opposite Party objected by filing its counter affidavit stating that, the RVWPET No.47 of 2026



under Section 114 and Order-47, Rule-1 of the C.P.C., 1908 has been filed by the petitioner in delay of twenty years without explaining such delay. He(petitioner) has filed the REVWPET No.47 of 2026 for no other reason, but, only in order to harass him(Opposite Party) and he(Opposite Party) is the rightful owner of the suit properties. Therefore, he(petitioner) has filed REVWPET No.47 of 2026 for no other reason, but, only in order to debar him(Opposite Party) to get the fruit of the decree passed in his favour. That apart, this Court as per judgment passed in CMP No.1526 of 2025 had directed to the Executing Court to complete the execution proceeding vide Execution Case No.11 of 2008 within six months from the date of judgment passed in that CMP No.1526 of 2025. As such, the petitioner having been failed in his all attempts in each and every stages of the proceedings, he(petitioner) has filed RVWPET No.47 of 2026 along with this I.A. for no other reasons, but, only in order to harass him(Opposite Party). For which, the I.A. under Section 5 of the Indian Limitation Act, 1963 filed by the petitioner is liable to be dismissed.



2. I have already heard from the learned counsel for the petitioner and learned counsel for the Opposite Party.

In support of the prayer for condonation of delay, the learned counsel for the petitioner relied upon the following decisions:-

(i) In a case between ***Vishnu Vardhan @ Vishnu Pradhan vs. The State of Uttar Pradesh and others*** in Civil Appeal No.7777 of 2023 with W.P.(C) No.673 of 2023 with MA No.1737 of 2023 in MA No.255 of 2023 in C.A. No.3636 of 2022 with CONMT. Pet. (C) No.23-24/2024 in W.P.(C) No.673 of 2023 with Diary No.(s).6013 of 2024 with SMC(C) No.3 of 2024 decided on 23.07.2025(Larger Bench) by the Hon'ble Supreme Court of India.

(ii) In a case between ***Singhilal Chand Jain(Dead) vs. Rashtriya Swayamsewak Sangh, Panna and others*** : reported in ***(1996) 3 SCC-149***.

3. During the course of hearing, the learned counsels of both the sides fairly submitted that, the petitioner had filed CMA No.05 of 2022 under Section 47 of the C.P.C. before the Executing Court in Execution Case No.11 of 2008 praying for non-prosecution of that Execution Case No.11 of 2008 further and to drop the same alleging that, the



Opposite Party/Dhr has obtained the judgment and decree in RFA No.12/26 of 2006/2003 in his favour by practising fraud, for which, the Execution Case No.11 of 2008 is not required to be proceeded, but, the said Execution Case No.11 of 2008 is liable to be dropped.

The said CMA No.05 of 2022 of the petitioner was rejected on dated 18.06.2024 by the learned Civil Judge(Sr. Division), Keonjhar.

To which, the petitioner challenged the same by filing CRP No.2 of 2024, but, the said CRP No.02 of 2024 of the petitioner was dismissed by the learned District Judge, Keonjhar on dated 28.07.2025.

Then, he(petitioner) challenged the dismissal order passed in CRP No.2 of 2024 by filing CMP No.1526 of 2025 before this Court, but, the said CMP No.1526 of 2025 filed by the petitioner was dismissed by this Court on dated 11.12.2025.

4. It appears from the Para No.2 of this I.A. vide I.A. No. 75 of 2026 under Section 5 of the Indian Limitation Act, 1963 filed by the petitioner supported with an affidavit that,



“on dated 03.03.2022, he(petitioner) came to know about the alleged fraud practised by the Opposite Party. Then, he(petitioner) filed CMA No.5 of 2022 in Execution Case No.11 of 2008 praying for non-prosecution of the said Execution Case further on the ground that, the Dhr has obtained the decree in RFA No.12/26 of 2006/2003 in his favour by practising fraud but, the said CMA No.5 of 2022 of the petitioner was rejected by the Executing Court, thereafter, he(petitioner) filed revision, but, that revision was dismissed. Then, he(petitioner) filed CMP No.1526 of 2025 before this Court, but, his CMP No.1526 of 2025 was dismissed.”

5. It is the settled propositions of law that,

when a proceeding is instituted with limitation-linked delay, the said proceeding does not actually figure as a regular matter in the file of the Court, until the delay is condoned.

When, a party raises very same ground for condonation delay, which was raised in earlier round of litigation and the said delay was not condoned, then, the self-same ground in



subsequent litigation for condonation of delay cannot be allowed.

Length of delay is a relevant matter, to which, Court must take into consideration, while considering, whether delay should be condoned or not.

No court should allow to keep sword of democles hanging over head of a litigant for an indefinite period of time.

Concept of liberal approach, justice oriented approach or substantial justice should not be applied to frustrate substantial law of limitation.

6. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between **S. Nagesh vs. Sobha S. Aradhya** : reported in **2026(1) CCC-34(S.C.)** that,

When, a proceeding instituted with limitation linked delay before Court of law, the same proceeding does not actually figure as a regular matter on its file until delay is condoned.

(ii) In a case between **Mool Chandra vs. Union of India and another** : reported in **(2025) 1 SCC-625** that,

While considering the application for condonation of delay, merits of case should not be considered.



(iii) In a case between ***Union of India and another vrs. Jahangir Byramji Leojeebhoy(D) through LR*** : reported in 2024(4) ***Civil Court Cases-399*** that,

Length of delay is a relevant matter, which Court must take into consideration while considering, the whether delay should be condoned or not.(Para-26)

(iv) In a case between ***T.V. Venkatasamy Chettiar vrs. K. Ayyadurai*** : reported in 2023(2) ***CCC-96(Madras)*** that,

In the event of condoning long delay, the rights of the other parties are prejudiced and the other, who secured the decree few years back cannot be in a position to contest the case after long delay—No justifiable reason found for condonation of delay. So petition under Section 5 of the Indian Limitation Act for condonation of delay was not allowed.

(v) In a case between ***H. Guruswamy and others vrs. A. Krishnaiah(since deceased) by LRs.*** : reported in 2025(3) ***Civil L.J.(S.C.)-734*** that,

Rules of limitation are based on principles of sound public policy—No Court should allow to keep ‘Sword of Damocles hanging over head of a litigant for an indefinite period of time—

Concepts of ‘liberal approach’, ‘justice oriented approach’ or ‘substantial justice’. Should not be applied to frustrate substantial Law of Limitation. Delay was not condoned.

(vi) In a case between ***Thirunagalingam vrs. Lingeswaran and another*** : reported in 2025(3) ***Civil Court Cases(S.C.)-618*** that,



There was a petition under Section 5 of the Indian Limitation Act, 1963 by the petitioners/respondents for condonation of 1116 days delay. The petitioners/respondents had raised very same ground for condonation of delay in earlier litigation, but, the same was rejected and the delay was not condoned. For which, the same ground raised in the subsequent litigation for condonation of delay can never be accepted.

7. Here in this matter at hand, when it is the own case of the petitioner as per the averments made in Para No.2 of his Interlocutory Application under Section 5 of the Indian Limitation Act, 1963 vide I.A. No.75 of 2026 and the submissions of the learned counsels of both the sides that,, on dated 03.03.2022, he(petitioner) came to know about the alleged fraud, then, he(petitioner) brought the same to the knowledge of the learned Civil Judge(Sr. Division), Keonjhar by filing CMA No.5 of 2022, but, his said CMA No.05 of 2022 was rejected on dated 18.06.2024 and then, he(petitioner) challenged that rejection order passed in CMA No.05 of 2022 by filing CRP No.02 of 2024 before the learned District Judge, Keonjhar, but, his said CRP No.02 of 2024 was dismissed on dated 28.07.2025. Then, he(petitioner) challenged that dismissal order passed in CRP



No.02 of 2024 by filing CMP No.1526 of 2025 under Article 227 of the Constitution of India, 1950, before this Court, but, that CMP No.1526 of 2025 of the petitioner was dismissed by this Court on dated 11.12.2025, then, after being failure in his all attempts starting from the Court of learned Civil Judge(Sr. Division), Keonjhar up to this Court in CMP No.1526 of 2025, he(petitioner) filed REVWPET No.47 of 2026 under Section 114 read with Order-47, Rule-1 of the C.P.C., 1908 along with this Interlocutory Application vide I.A. No.47 of 2026 under Section 5 of the Indian Limitation Act, 1963 praying for condonation of delay of nineteen years one month and twenty-four days in filing REVWPET No.47 of 2026 on the same ground, i.e., fraud, which was raised by him(petitioner) earlier in CMP No.05 of 2022, CRP No.02 of 2024 and CMP No.1526 of 2025, but, the same was refused(turned down) in all the courts serially on hierarchy basis up to this Court in CMP No.1526 of 2025, then at this juncture, in view of the propositions of law enunciated in the ratio of the aforesaid decisions specifically in the ratio of the decision between ***Thirunagalingam vrs. Lingeswaran and another*** :



reported in **2025(3) Civil Court Cases(S.C.)-618**, the prayer for condonation of delay of nineteen years one month and twenty-four days sought for by the petitioner in filing REVWPET No.47 of 2026 cannot be allowed.

8. For which, there is no merit in this I.A. under Section 5 of the Indian Limitation Act, 1963 filed by the petitioner. The same must fail.

9. In result, this I.A. filed by the petitioner is dismissed on contest.

Due to the final disposal of this I.A., through this judgment, Interim orders(those were passed in this I.A.) are terminated automatically.

10. As such, this I.A. filed by the petitioner is disposed of finally.

(A.C. Behera)
Judge

Orissa High Court, Cuttack
The 23rd of March, 2026/ Jagabandhu, P.A.