

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Appeal No.64 of 2016

Ram Prakash Gupta and another ...Appellants/defendants

Versus

Lakhvindar Singh Respondent/plaintiff

Present:-

Mr. Anoop Jaiswal, Advocate for the appellants/defendants
through video conferencing.

Mr. Tarun Pandey, Advocate for the respondent/plaintiff.

Hon'ble Siddhartha Sah, J.

The instant first appeal has been preferred against the impugned judgment and decree dated 31.03.2016 passed by Sri Rahul Kumar Srivastava Ist Additional Civil Judge (S.D.), Rudrapur, Udham Singh Nagar in Original Suit No.48/2012, Lakhvindar Singh vs. Ram Prakash Gupta and another, thereby decreeing the suit in favour of the plaintiff against the defendants.

2. Heard learned counsel for the parties and perused the record.

3. The defect has been pointed out by the Registry that NOC has not been taken in the 'Vakalatnama' filed by the new counsel to which Mr. Anoop Jaiswal, learned counsel for the appellants states that he has already taken the oral consent of Mr. V.D. Bisen, appellants' counsel and that he will be appearing jointly along with Mr. V.D. Bisen. Mr. Tarun Pandey, learned counsel for the respondent does not have any objection to this submission.

4. In such view of the matter, the defect as pointed out by the Registry is ignored.

5. The present appeal was dismissed for non-prosecution vide order dated 10.07.2023. The Restoration Application has been filed praying for restoration of the present appeal to its original number along with consequential orders. The Restoration Application is delayed, hence, it has been filed with the delay of 764 days. The delay that has chanced in filing the restoration application has been tried to be explained in Delay Condonation Application, wherein, it has been stated as under:-

“2. That the above noted first appeal was listed before this Hon'ble Court on 10.07.2023 and the same has been dismissed by this Hon'ble Court for non-prosecution as no one appeared before the Hon'ble Court on behalf of the appellants when the case was called out.

3. That it is humbly submitted before this Hon'ble Court that the appellants are illiterate and poor people who could not do the effective pairvi of their case. The previous counsel for the appellants tried to contact the appellants but could not get connected.

4. That the appellants being illiterate did not have any idea about the status of their case and even do not know the procedure of the court. It is pertinent to mention herein that due to some family disputes the appellant no. 1 and appellant no. 2 are living separately and therefore, only appellant no. 2 is before this Hon'ble Court and filing restoration application.

5. That on 06.08.2025 the appellant no. 2 came to know about the order dated 10.07.2023 of this Hon'ble Court when she received summons to appear in Execution No. 10 of 2025, "Lakhvindar Singh Vs Ram Prakash Gupta & Anr." filed by the respondent. A copy of order dated 10.07.2023 is being marked and annexed as **Annexure No. 1** to this application.

6. That after the knowledge of said order the appellant no. 2 got depressed and hopeless and sought legal advice from their present counsel. After seeking legal advice, the appellant no. 2 gathered resources and documents to file the present application without any further delay. Thereafter, the draft of this restoration application with delay condonation application has been prepared and the same are being filed.

7. That this is an admitted First Appeal and non appearance of the appellants before this Hon'ble Court on 10.07.2023 is neither intentional nor deliberate but due to inadvertent reason stated above. The appellants have a strong case on merits and therefore, prays this Hon'ble Court to restore the present case and hear the case on merits.

8. That under the facts and circumstances of the case as stated above it is expedient in the interest of justice that this Hon'ble Court may graciously be pleased to allow the present restoration application and restore the above noted first appeal to its original number along with all consequential orders, if any, failing which the applicant/appellant will suffer irreparable loss and injury which may not be compensated by any other means.”

5. Against the Delay Condonation Application, objections have been filed and in the said objections, it has been contended as under:-

“6. That the contents of Paragraph No. 3 are vehemently denied. The alleged illiteracy or poverty of the Appellants cannot be a blanket shield for absolute inaction. The failure of their previous counsel to contact them is an internal matter and highlights the Appellants' own failure to follow up on their case.

7. That the contents of Paragraph No. 4 are denied. Internal family disputes between Appellant No. 1 and 2 do not constitute a "sufficient cause" in the eyes of the law to condone a delay spanning over two years.

8. That the contents of Paragraph No. 5 are strictly denied. The claim that the Appellants only gained knowledge of the 10.07.2023 order on 06.08.2025 upon receiving summons in Execution No. 10 of 2025 is a blatant falsehood manufactured to create an artificial cause of action.

9. That the contents of Paragraph No. 6 are denied. The assertion that they filed the application "without any further delay" is contradicted by the record. Even if they allegedly sought advice on 06.08.2025, the defective filing occurred on 16.09.2025, and they made no effort to cure defects until March 2026.”

6. Since the reasons for delay have been stated in the Delay Condonation Application are found to be sufficient and the present first appeal deserves to be decided on its own merit, hence the delay that has chanced in filing the Restoration Application deserves to be condoned.

7. However, subject to payment of cost of Rs.3,000/- to be deposited in the High Court Bar Association Advocate Welfare Fund within a period of two weeks.

8. Subject to the above, the Delay Condonation Application (IA No.6778 of 2025) is allowed.

9. In the Restoration Application (IA No.6777 of 2025), it has been stated as under:-

“3. That it is humbly submitted before this Hon'ble Court that the appellants are illiterate and poor people who could not do the effective pairvi of their case. The previous counsel for the appellants tried to contact the appellants but could not get connected.

4. That the appellants being illiterate did not have any idea about the status of their case and even do not know the procedure of the court. It is pertinent to mention herein that due to some family disputes the appellant no. 1 and appellant no. 2 are living separately and therefore, only appellant no. 2 is before this Hon'ble Court and filing restoration application.

5. That on 06.08.2025 the appellant no. 2 came to know about the order dated 10.07.2023 of this Hon'ble Court when she received summons to appear in Execution No. 10 of 2025, "Lakhvindar Singh Vs Ram Prakash Gupta & Anr." filed by the respondent. A copy of order dated 10.07.2023 is being marked and annexed as Annexure No. 1 to this application.

6. That after the knowledge of said order the appellant no. 2 got depressed and hopeless and sought legal advice from their present counsel. After seeking legal advice, the appellant no. 2 gathered resources and documents to file the present application without any further delay. Thereafter, the draft of this restoration application with delay condonation application has been prepared and the same are being filed.

7. That this is an admitted First Appeal and non appearance of the appellants before this Hon'ble Court on 10.07.2023 is neither intentional nor deliberate but due to inadvertent reason stated above. The appellants have a strong case on merits and therefore, prays this Hon'ble Court to restore the present case and hear the case on merits.”

10. Against the Restoration Application, the objections have been filed on behalf of the respondent which are as under:-

“6. That the contents of Paragraph No. 3 are vehemently denied. The alleged illiteracy or poverty of the Appellants cannot be a blanket shield for absolute inaction. The failure of their previous counsel to contact them is an internal matter and highlights the Appellants' own failure to follow up on their case.

7. That the contents of Paragraph No. 4 are denied. Internal family disputes between Appellant No. 1 and 2 do not constitute a "sufficient cause" in the eyes of the law to condone a delay spanning over two years.

8. That the contents of Paragraph No. 5 are strictly denied. The claim that the Appellants only gained knowledge of the 10.07.2023 order on 06.08.2025 upon receiving summons in Execution No. 10 of 2025 is a blatant falsehood manufactured to create an artificial cause of action.

9. That the contents of Paragraph No. 6 are denied. The assertion that they filed the application "without any further delay" is contradicted by the record. Even if they allegedly sought advice on 06.08.2025, the defective filing occurred on 16.09.2025, and they made no effort to cure defects until March 2026.

10. That the contents of Paragraph No. 7 are a matter of record regarding the calculation of 764 days of delay, which is massive and unexplained.”

11. The cause that has been shown for the Restoration of the appeal is found to be sufficient. Hence, the Restoration Application (MCC No.6777 of 2025) is allowed. The appeal is restored to its original number.

12. Yesterday, the appellant was directed to show her *bona fide* by paying part of the decretal amount to the respondent.

13. Today, Mr. Tarun Pandey, learned counsel for the appellant states at Bar that his client has received an amount of Rs.50,000/- through online transfer. The print out of the online payment is taken on record. Since the appellant has shown *bona fide* and is also ready to pay the decretal amount although in instalments, hence, in such view of the matter, the further proceedings of Execution

Case are stayed only till the next date of listing. Regarding the decretal amount, the learned counsel for the appellant states that the said decretal amount deserves to be negotiated and for that purpose, on the next date, the parties may be called in person.

14. List this case on 30.04.2026.

15. On that date, the appellant as well as the respondent will appear in person so that the amount and the terms of settlement may be deliberated upon.

(Siddhartha Sah, J.)
17.04.2026