



2026:MNHC:178-DB

REPORTABLE

Sl. No. 17

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(RFA) No. 2 of 2026

Shri Hijam Roben Singh, aged about 49 years, S/o Late
Nilla Singh of Thoubal Nongangkhong Lai Leirak, P.O. &
P.S. Thoubal, Thoubal District, Manipur.

..... Applicant

-Versus-

Shri Okram Birendra Singh, aged about 75 years, S/o
Late O. Narahari Singh of Thoubal Haokha Mamang
Leikai, P.O. & P.S. Thoubal, Thoubal District, Manipur.

..... Respondent

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For applicant	Mr. T. Rajendra, learned senior counsel instructed by Md. Shakir Khan, learned counsel on record
For respondent	Mr. L. Seityandra, learned counsel along with Ms. N. Kavita, learned counsel on record
Date of Judgment and Order	14.08.2026

**JUDGMENT AND ORDER
(ORAL)**

[M. Sundar, CJ]

[1] Instant order has to be read in conjunction with and in continuation of earlier proceedings made by this Court in the listing on 11.06.2026 and scanned reproduction of the proceedings made by this Court on 11.06.2026 is as follows :



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Sl. No. 7

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(RFA) No. 2 of 2026

Shri Hijam Roben Singh, aged about 49 years, S/o Late Nilla Singh
of Thoubal Nongangkhong Lai Leirak, P.O. & P.S. Thoubal District,
Manipur.

..... Petitioner/appellant

Vs.

Shri Okram Birendra Singh, aged about 75 years, S/o late O.
Narahari Singh of Thoubal Haokha Mamang Leikai, P.O. & P.S.
Thoubal, Thoubal District, Manipur.

..... OP/Respondent

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH
(ORDER)**

(Order of the Court was made by Mr. M. Sundar, CJ)

11.06.2026

[1] The following Abbreviations/Short Forms/short references for the
sake of brevity/convenience and clarity are used in this order:

Sl. No.	Abbreviation/ Short Form/short reference	Full Form/Expansion
1.	MC	Miscellaneous Case
2.	CPC	the Code of Civil Procedure, 1908 (5 of 1908)
3.	judgment and decree dated 05.08.2019 made in Original (Money) Suit No. 7 of 2017 on the file of Court of Civil Judge, Senior Division, Thoubal, Manipur	impugned decree
4.	Court of Civil Judge, Senior Division, Thoubal, Manipur	said trial court
5.	Original (Money) Suit No. 7 of 2017	said Money Suit

[2] Captioned MC has been filed with a prayer to condone a delay
of 1662 days in filing a Regular First Appeal *inter-alia* under Section 96 of



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the 'CPC' assailing 'judgment and decree dated 05.08.2019 made in Original (Money) Suit No. 7 of 2017 on the file of Court of Civil Judge, Senior Division, Thoubal, Manipur'. To be noted, this judgment and decree is being referred to as 'impugned decree', the trial court which made the impugned decree is being referred to as 'said trial court' and the suit in which impugned decree was made is being referred to as 'said Money Suit', all for the sake of brevity, convenience and clarity.

[3] When the captioned MC was listed before this court on 22.05.2026, the following proceedings was made :

'Item No. 2(Supplementary)

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(RFA) No. 2 of 2026

Hijam Roben Singh

... Applicant

- Versus -

Okram Birendra Singh

... Respondent

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

ORDER

[M. Sundar, CJ]

22.05.2026

[1] When the matter was taken up, it came to light that 'Miscellaneous Case' ('MC' for the sake of convenience) applicants are seeking exclusion of the period from 15.03.2020 to 28.02.2022 by relying on order of Hon'ble Supreme Court dated 10.01.2022 in recognizance for extension of limitation (Covid Period). To be noted, captioned MC has been filed with a condonation of delay (CoD) prayer.

[2] It is pointed out that afore-referred period itself lapsed more than 4 (four) years and 2 (two) months ago i.e., on 28.02.2022 as MC has been presented in this Court only on 21.05.2026.

[3] Faced with the above situation, Mr. Md. Sakir Khan, learned counsel on record for MC applicants sought time to examine the legal position besides examining other legal issues.

[4] Afore-referred request of learned counsel for MC applicants is acceded to.

[5] List after a fortnight.

[6] List on 10.06.2026.

JUDGE

CHIEF JUSTICE

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[4] Today, Mr. T. Rajendra, learned senior advocate instructed by Mr. Md. Shakir Khan, learned counsel on record for the MC applicant is before this Court. It comes to light from a perusal of the MC application that *inter-alia*, change of counsel, communication gap/lapse in transfer of case file from erstwhile counsel to new counsel are some of the reasons for delay.

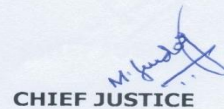
[5] This Court deems it appropriate to issue notice making it clear that question captured in afore referred 22.05.2026 proceedings pertaining to exclusion of Covid period for 4 years and 2 months will be considered post notice.

[6] Issue notice to respondent returnable by 24.06.2026. Dasti notice permitted. Besides notice and dasti notice, learned counsel on record for the MC applicant is also permitted to serve on the counsel on record for the decree holder in Money Execution No. 1 of 2021 (case number) on the file of the Court of Chief Judicial Magistrate cum Civil Judge, Senior Division, Thoubal, Manipur.

[7] List on 24.06.2026.

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JUDGE


CHIEF JUSTICE

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[2] In addition to the abbreviations, short forms and short references used in afore-referred proceedings made in the listing on 11.06.2026, the following abbreviations, short forms and short references shall also be used in instant order, obviously for the sake of brevity/convenience and clarity and a tabulation in this regard is as follows :



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Sl. No.	Abbreviation/ Short Form/ short reference	Full Form/Expansion
1.	CoD	Condonation of Delay
2.	Limitation Act	The Limitation Act, 1963 (36 of 1963)
3.	Executing Court	Court of Civil Judge Senior Division, Thoubal, Manipur (to be noted, Executing Court and said trial Court are one and the same)
4.	said Execution Petition	Execution Petition No. 1 of 2021 on the file of said Executing Court launched for executing impugned decree <i>inter-alia</i> by attachment and sale of immovable property.
5.	RFA	Regular First Appeal (an appeal under Section 96 of CPC)
6.	DPN	Demand Promissory Note
7.	Cr.P.C.	The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)

[3] In the hearing today, Mr. T. Rajendra, learned senior advocate instructed by Mr. Md. Shakir Khan, learned counsel on record for the CRP petitioner and Mr. L. Seityandra, learned counsel along with Ms. N. Kavita, learned counsel on record on behalf of the sole respondent are before this Court.

[4] Respondent has filed affidavit-in-opposition, MC applicant has filed additional affidavit and pleadings are complete. Learned senior counsel and learned counsel on both sides made elaborate submissions. Captioned MC was heard out in full.

[5] As would be evident from earlier proceedings made by this Court in the listing on 11.06.2026, captioned MC has been filed with a



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CoD prayer *qua* 1662 days (more than four and half years) *qua* an RFA against impugned decree which is an ex-parte money decree. In afore-referred 11.06.2026 proceedings an inadvertent typographical error has crept in. Covid period exclusion is from 15.03.2020 to 28.02.2022 (two years) and not four years and two months. The point is, RFA with captioned MC has been filed in this court on 21.05.2026 which is more than 4 years and 2 months after Covid period two years exclusion had elapsed on 28.02.2022. Instant order on being uploaded in official website of High Court will serve as an Erratum/Corrigendum *qua* paragraph 5 of afore-referred 11.06.2026 proceedings which is now an integral part and parcel of this order. To be noted, RFA (along with captioned MC) has been filed in this Court on 21.05.2026. The MC applicant is sole defendant in said trial Court in said money suit. Obviously, the lone respondent in captioned MC is sole plaintiff in said money suit in said trial Court. It is also deemed appropriate to write that post impugned decree, the MC applicant is judgment debtor and the respondent in the captioned MC is the decree holder. As decree holder, respondent launched said Execution Petition on 18.01.2021 and it is now at a very advanced stage and there will be more allusion about this elsewhere infra in this order.

[6] To be noted, for the sake of convenience and clarity, from hereon and henceforth, in instant order, parties in captioned MC will be referred to by their respective ranks in said trial court in said money



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suit. This means that the 'sole MC applicant' shall be referred to as 'defendant' and the 'sole respondent in captioned MC' shall be referred to as 'plaintiff'.

[7] Factual matrix in a nutshell i.e., short facts shorn of, elaboration and particulars not imperative for appreciating instant order are that the defendant borrowed a sum of forty-four lakhs from the plaintiff and executed a DPN dated 30.08.2015; that the plaintiff demanded money under DPN in and vide a legal notice dated 30.11.2017; that the defendant received this legal notice/demand and admittedly, the defendant neither replied nor complied; that thereafter, the plaintiff presented said money suit in said trial Court vide a plaint dated 04.12.2017 and the date of institution of the suit is 05.12.2017; that the suit was assigned the number Original (Money) Suit No. 7 of 2017; that the said Money Suit was filed by the plaintiff by resorting to Order XXXVII of CPC; that this means that the said Money Suit is a summary suit; that on receipt of suit summons, the defendant entered appearance, obviously within the prescribed time limit as defendant applied for leave to defend and leave to defend was granted by said trial Court in and by an order dated 03.05.2018; that the defendant did not file written statement though leave was granted and the order granting leave had become final; that it is to be noted that written statement has not been filed by defendant until the impugned decree was made by said trial Court on 05.08.2019; that, to be noted, there is



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no written statement on file even today; that post grant of leave to defend on 03.05.2018, the defendant was set ex-parte vide Order IX Rule 7 and this was in and by an order dated 21.07.2018; that the defendant filed Judicial MC No. 74 of 2019 with a prayer to set aside the order dated 21.07.2018 setting him ex-parte but this was also rejected by the trial Court in and by an order dated 17.06.2019; that the defendant came to this Court by way of a CRP under Article 227 of the Constitution of India assailing the order setting him ex-parte in said money suit and this is CRP (CRP Art. 227) No. 39 of 2019; that this CRP, after full contest, was dismissed by a detailed order by Hon'ble predecessor Chief Justice in and by an order dated 18.07.2019; that this 18.07.2019 order of this Court made in CRP (CRP Art. 227) No. 39 of 2019 dismissing defendant's challenge to the order setting him ex-parte has been given finality; that it has attained finality and has been given legal quietus, as admittedly the defendant has not carried the matter to Hon'ble Supreme Court; that thereafter, the said trial Court made the ex-parte judgment and decree (Money Decree) dated 05.08.2019 which are collectively, for the sake of convenience being referred to as 'impugned decree' in instant order; that the impugned decree was made after examining 3 (three) witnesses on plaintiff's side (PW1 to PW3) and marking of 8 (eight) exhibits; that when this ex-parte decree was made, while the year of the suit was correctly shown as 2017 in the judgment, it was wrongly shown as 2018 in the decree; that



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this was corrected by an order dated 04.05.2026 made by said trial Court and this obviously is an order under Section 152 of CPC as it is clearly a case of clerical error i.e., an accidental slip and it is nobody's case that the correction impacts the outcome of the decree in any manner; that it is to be noted that this impugned decree was made after drawing up and setting out 4 (four) points for determination; that post impugned decree, defendant filed an application for setting aside the ex-parte decree (impugned decree) by resorting to Order IX Rule 13 of CPC; that this application was filed along with a CoD application; that interestingly and intriguingly this CoD application and the application to set aside the ex-parte decree were numbered simultaneously and more intriguingly the application to set aside the ex-parte decree has been given a prior number i.e., one number prior to the CoD application; that it is to be noted that the CoD application is Judl. MC Case No. 59 of 2022 and the application to set aside the ex-parte decree is Judl. Misc. Case No. 58 of 2022; that this is clearly an erroneous procedure as an application filed with delay can be numbered only after the delay is condoned; that doing the reverse is putting the cart before the horse besides being a legally incorrect procedure as any petition, appeal or application filed after prescribed period of limitation cannot be heard on merits without the delay being condoned; that owing to the perimeter of legal drill at hand, we refrain from dilating more on this but suffice to write that all courts in Manipur shall ensure that such an erroneous



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procedure is not followed (to be noted, we find such a procedure in many cases and that has impelled us to pen this part); that under such circumstances, the CoD application being Judl. Misc. Case No. 59 of 2022 was allowed by said trial Court *vide* judicial order dated 27.02.2023, it is to be noted that it was allowed on terms i.e., Rs. 500/- (rupees five hundred) to be paid to the plaintiff; that learned counsel for plaintiff, on instructions from plaintiff, submits that this Rs. 500/- has not been paid to the plaintiff until this date and there is no contra material before this Court on the side of defendant in this regard; that under such circumstances, said trial Court, took up Judl. Misc. Case No. 58 of 2022 and dismissed the same by way of judicial order dated 02.03.2026; that it is to be noted that this 02.03.2026 order dismissing defendant's Order IX Rule 13 application has not been assailed further until today; that under such circumstances, as already alluded to supra, the minor clerical error owing to accidental slip in the decree *qua* the decree part of impugned decree was corrected on 04.05.2026 by way of a judicial order; that in the interregnum, said Execution Petition was launched by the decree holder, it proceeded and it had reached a stage where the said executing court ordered attachment on 01.04.2026 and fixed the next date as 04.05.2026 calling for a report; that on 04.05.2026, the matter was listed for report *qua* attachment; that it is after this 04.05.2026 proceedings of said executing Court, when the executing court had fixed the next date as 01.06.2026, RFA with



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captioned CoD MC has been filed in this Court on 21.05.2026; that as already alluded to supra, captioned MC has been filed with a CoD prayer *qua* 1662 days delay in filing RFA; that it is under such circumstances, captioned MC was heard out elaborately.

[8] This Court now proceeds to set out the contentions, counter-contentions and set out its discussions and dispositive reasoning one after the other and an adumbration of the same is as follows :

- (i) Learned senior counsel for defendant, advertng to 27.02.2023 order made in Judl. Misc. Case No. 59 of 2022 (CoD application which was allowed on terms of Rs. 500/- to be paid to plaintiff), adverted to paragraph 7 thereat and submitted that said trial court has observed that explanation for delay in obtaining certified copies of the judgment and order dated 05.08.2019 appears to be acceptable as the functioning of the Court was affected by Covid 19. It was also pointed out that certified copies were obtained on 02.03.2021 and the defendant had filed the CoD application on 19.03.2021 which is within



30 (thirty) days. It was submitted that said trial Court has observed that the CoD application *qua* Order IX Rule 13 application was filed within time. However, the Order IX Rule 13 application (which was numbered even before delay was condoned and assigned a number prior to CoD application) came to be dismissed by way of a judicial order dated 02.03.2026 and as rightly pointed out by learned counsel for plaintiff the same has not been assailed by the defendant in any manner until this day and therefore, the argument that said trial court has noticed that the CoD application *qua* Order IX Rule 13 application has been filed within time is of no avail as regards the captioned MC and it does not come to the aid of the MC applicant as 02.03.2025 dismissal order (dismissing Order IX Rule 13 application has not been challenged). This puts an end to the first point urged;

- (ii) The next point that was urged is, time spent in Order IX Rule 13 application should be



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excluded. In support of this contention, learned senior counsel pressed into service ***Bhivchandra Shankar More Vs. Balu Gangaram More and Others*** reported in ***(2019) 6 SCC 387***. On facts, ***Bhivchandra*** is a case which arose out of a partition suit. More importantly, in ***Bhivchandra***, on facts, aggrieved by the dismissal of the Order IX Rule 13 application on 03.09.2010, the appellant before the Hon'ble Supreme Court and two respondents filed a Civil Appeal and the same was withdrawn on 11.06.2013 but on the very next day i.e., 12.06.2013, the appellant and the two respondents (R14 and R15) filed a Regular First Appeal challenging the ex-parte decree passed in Regular Civil Suit thereat. These facts are captured in paragraphs 3 and 4 of ***Bhivchandra***. Before respectfully advertng to ***Bhivchandra*** which was pressed into service by learned senior counsel for defendant/MC applicant, this Court deems it appropriate to respectfully refer to oft quoted and celebrated



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Constitution Bench judgment in ***Padma Sundara Rao*** reported in ***(2002) 3 SCC 533 { Padma Sundara Rao (Dead) and Others Vs. State of T.N. and others}***.

Padma Sundara Rao having been rendered by a Hon'ble Constitution Bench, is more a declaration of law than a ratio. Be that as it may, ***Padma Sundara Rao*** is an authority/declaration of law regarding how case laws have to be referred to. On facts, ***Padma Sundara Rao*** arose under Central Land Acquisition Act. The question in ***Padma Sundara Rao*** was, after quashing of land acquisition proceedings under Central Act whether the State will get a fresh period for making declaration under Section 6 of the Central Act. In this fact scenario, Hon'ble Supreme Court declared the law as to how a case law has to be relied on. It was made clear that Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed and



it was made clear that circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. This declaration of law was made *inter-alia* by relying on articulation of Lord Morris in the celebrated **Herrington Vs. British Railways Board** reported in **(1972) 2 WLR 537**. Relevant paragraph in ***Padma Sundara Rao*** is paragraph 9 and the same reads as follows :

*'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in **Herrington Vs. British Railways Board (1972) 2 WLR 537**. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

In the light of **Padma Sundara Rao**, this Court very respectfully read through facts in **Bhivchandra** and finds that it is clearly distinguishable on facts for at least two reasons. The first reason is,



Bhivchandra arose out of a partition suit and in a partition suit as much as there are no plaintiffs and no defendants, there is no limitation too. The second reason is, in **Bhivchandra**, as adverted to in the earlier part of this order, on dismissal of Order IX Rule 13 application, the appellant with two respondents filed an appeal assailing the same, withdrew the same but on the very next date, regular first appeal was filed.

- (iii) In the case at hand, it is a money suit and more so, a money suit filed by resorting to Order XXXVII of CPC i.e., a summary suit and the money suit is predicated on a DPN. Be that as it may, the second distinguishable feature is, challenge to the Order IX Rule 13 dismissal has never happened in instant case. For these reasons, this Court has no hesitation in respectfully writing that **Bhivchandra** is clearly distinguishable on facts and therefore, does not come to the aid of the defendant/(MC applicant) in the instant case.



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- (iv) Learned senior counsel pressed into service **Koushik Mutually Aided Cooperative Housing Society -vs- Ameena Begum & Anr.** reported in **2023 Legal Eagle (SC) 1212** and submitted that Order IX Rule 13 dismissal does not come in the way of RFA. We respectfully and carefully read through **Ameena Begum**. This Court finds that **Ameena Begum** is an authority for the proposition that an appeal will lie and an appeal i.e. a regular first appeal under Section 96 of CPC is maintainable even if an application for setting aside ex-parte decree under Order IX Rule 13 has been dismissed. There can be no quarrel of this proposition. There can be no quarrel that even an ex-parte decree is appealable but in the instant case, we are not now on the maintainability of RFA. This Court is now examining the CoD application and as to whether sufficient reasons have been shown for condonation of delay *qua* RFA which has been filed on 21.05.2026 in this Court with a delay of 1662



days. Therefore **Ameena Begum** also does not come to the aid of the MC applicant/defendant in the case at hand i.e., in the captioned MC application as captioned MC application is one that has been filed with CoD prayer (1662 days delay) *qua* RFA.

- (v) As regards sufficient cause *qua* Section 5 of Limitation Act, learned senior counsel pressed into service **Collector Land Acquisition, Anantnag & Anr. -vs- Mst. Katiji & Ors.** reported in ***AIR 1987 SC 1353***. This case law shall be referred to as **Katiji** for the sake of convenience. Relying on **Katiji** case, learned senior counsel submitted that the expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life and purpose for the existence of institution of Courts. As regards **Katiji** case, on respectfully following/applying **Padma Sundara Rao** declaration of law



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about which there is allusion *supra*, it is clear that **Katiji** is distinguishable on facts and it does not come to the aid of the MC applicant/defendant. The reason is, **Katiji** is a case where four days delay was sought to be condoned and the 4 days delay sought to be condoned was *qua* assailing upward revision of compensation for land acquisition and upward revision of 800% (percentage). Therefore, this Court respectfully holds that **Katiji** also does not come to the aid of MC applicant/defendant. Be that as it may, we are respectfully applying the principle i.e., ensuring that it subserves the ends of justice not only for defendant but for plaintiff also who got a money decree on the basis of a DPN way back in 2019. Learned senior counsel pressed into service **State Of Nagaland vs Lipok Ao & Ors** reported in (2005) 3 SCC 752. **Lipok Ao** is an authority for the proposition that in delay condonation applications, what counts is sufficiency of



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cause more than the length of delay though shortness of delay is one of the circumstances that can be taken into account in using discretion to condone delay. 1662 days delay is not short by any yardstick. This Court will now examine the reason for delay given by the MC applicant/defendant *infra*. Before doing that, this Court deems it appropriate to write that this is a case *qua* delay of 1662 days (more than 4 and half years) in contradistinction to facts in **Lipok Ao** where it was a case of 57 days delay in filing an application for grant of leave in terms of Section 378 of erstwhile CrPC. To be noted, Section 378 of erstwhile CrPC deals with appeals against acquittal and **Lipok Ao** was a case where State went on appeal against acquittal and there was a delay of 57 days. Nonetheless, the cause shown and whether it is sufficient cause within the meaning of Section 5 of the



Limitation Act in the instant case will be examined in the following paragraphs *infra*.

- (vi) As regards the cause shown, it is to be noted that even according to averments of MC applicant/defendant, the defendant applied for certified copy of the impugned judgment and decree (impugned decree) on 19.08.2019 and ultimately obtained the same on 02.03.2021 and this averment is in paragraph No. 6 of captioned MC application. This means that 19.08.2019 is clearly the date of knowledge of the defendant with regard to the impugned decree but the RFA with captioned MC has been filed on 21.05.2026 that too after attachment order of executing Court and report regarding attachment *qua* the executing Court i.e., at an advanced stage of the execution proceedings. The burden of the song as regards the cause for delay is, some deficiencies and difficulties on the part of erstwhile learned counsel for defendant in the said Trial Court and then



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a change of counsel in said Trial Court.

Another reason that is being cited is the

exclusion of the Covid period i.e.,

15.03.2020 to 28.02.2022 which was

excluded across the Board by Hon'ble

Supreme Court in and *vide* a judicial order

dated 10.01.2022 made in Suo-Moto Writ

Petition No. 3 of 2020 **(In Re:**

Cognizance for Extension of

Limitation). While there can be no

disputation or contestation as regards this

period, the question is whether MC

applicant/defendant can claim benefit of

exclusion of this period. As would be

evident from 11.06.2026 proceedings

made by this Court and more particularly

paragraph No. 5 thereat, the excluded

period elapsed on 28.02.2022 but RFA with

captioned MC has been filed in this Court

only on 21.05.2026, more than 4 years and

2 months after the excluded period

elapsed. To be noted, Hon'ble Supreme

Court, while excluding the period from



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15.03.2020 to 28.02.2022, made an order even before 28.02.2022 as the order of Hon'ble Supreme Court is dated 10.01.2022. Therefore, Hon'ble Supreme Court, while making order dated 10.01.2022 had provided a further window of nearly 7 (seven) weeks. As an illustration, if Court vacation intervenes and if period of limitation elapses on a date during Court vacation, if the application/petition/appeal is filed on the re-opening day, the period of vacation will be excluded but if the same application/appeal/petition is filed even one day after re-opening, vacation period will be added to the period sought to be condoned. The same principle will operate the instant case too. When the excluded period elapsed on 28.02.2022, the MC applicant cannot now be heard to contend that the period which ended on 28.02.2022 should be excluded in the captioned MC



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which has been filed more than 4 years and
2 months later on 21.05.2026.

- (vii) Learned senior counsel, placed before this Court an order made by one of us (M. Sundar, CJ) sitting as Single Bench in **Nongmaithem Tolhal Singh -vs- Nongmaithem Maintomba Singh** reported in **2026 (1) MNLJ 117 : 2026 Legal Eagle 5**. In **Tolhal Singh**, at the outset, this Court makes it clear that though **Tolhal Singh** case was authored by one of us, the same was rendered by a Single Judge Bench and therefore the same cannot have any binding effect on this Division Bench. Nonetheless, we carefully considered **Tolhal Singh**. **Tolhal Singh** is a case of litigation between two blood brothers which has been passed on to their legal heirs and which has been described as an exception to the age old adage '*blood is thicker*'. Be that as it may, it was a case of two suits, a declaration suit and a specific performance suit and while one



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CRP was filed assailing dismissal of a transfer petition, another CRP was filed assailing dismissal of a judicial miscellaneous case with recall prayer. There was also a Section 10 CPC application. It is in this context, this Court held that the Trial Court order caused prejudice to both sides. It is not a case of condonation of delay petition. It is not a case where question as to when a party will be entitled to seek benefit of Re:cognizance Supreme Court order and seek exclusion of period from 15.03.2020 to 28.02.2022. Therefore suffice to write that **Tolhal Singh** does not in any manner come to the aid of MC applicant/defendant.

- (viii) Another point of contention is, impugned decree i.e. ex-parte money decree is not a decree made under Order XXXVII but a regular decree. Submissions were made to the effect that even for a ex-parte decree, the plaintiff has to discharge burden of proof. These are all in the realm of merits



of the matter and the defendant who has not chosen to file written statement and who has not chosen to assail the earlier CRP order of this Court dismissing the challenge to Order IX Rule 7 orders cannot now be heard to contend on this aspect of the matter. Be that as it may, without going into merits, on a cursory examination, we find that while making impugned decree, in said Trial Court, as already alluded to *supra*, three witnesses were examined (PW1 to PW3) and eight exhibits have been marked. Therefore, it is not a case of a judgment which has been made solely because the defendant remained ex-parte.

- (ix) There is another interesting and intriguing aspect of the matter which impacts the legal drill at hand. This is, on an extreme demurer, even if the delay is condoned and if the RFA is taken up, written statement of the defendant is not before the Court. The written statement of the defendant cannot be taken on file as earlier CRP order made



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by the predecessor Hon'ble Chief Justice on 18.07.2019 (CRP No. 39 of 2019) has attained finality and has been given legal *quietus*.

- (x) In the captioned MC, there is an averment to the effect that the grounds raised in the RFA shall be treated as grounds in captioned MC also. The question of examining grounds raised in RFA will arise only when the delay is condoned, RFA is numbered and taken up for hearing. However, this Court notices that as many as 15 (fifteen) grounds have been raised in the RFA. A careful perusal of the 15(fifteen) grounds brings to light that defendant has neither pleaded denial of execution of DPN nor pleaded discharge. A faint attempt has been made *vide* grounds (iii) and (v) to say that said Trial Court in the judgment dated 05.08.2019 (impugned decree) has not examined whether the transaction has been proved. In effect, as the defendant has neither pleaded denial of execution of



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DPN nor pleaded discharge and in the absence of written statement, we find that an RFA under Section 96 CPC at advanced stage of execution (post attachment) with MC for condonation of 1662 days delay is an untenable effort on the part of the defendant.

- (xi) Reverting to the reasons for delay, as already alluded to *supra*, the burden of the song of the defendant/MC applicant is difficulty/certain deficiencies *qua* erstwhile counsel in Trial Court and change of counsel and that the defendant could not effectively instruct the counsel. This, in the considered view of this Court, in the facts and circumstance of instant case, is a non-starter. It is hardly sufficient cause within the meaning of Section 5 of the Limitation Act that too for condoning 1662 days delay *qua* a RFA which has been filed more than 4 years and 2 months after elapsing of exclusion of Covid-19 period but claiming exclusion.



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(xii) This Court should also take into account the fact that a right crystallises in favour of the decree holder and this is a case where a right crystallised in favour of the decree holder more than 7 years ago i.e. on 05.08.2019 and the judgement debtor admittedly was aware of the decree at least on 19.08.2019 when the judgment debtor made application for certified copies of the judgment and decree. This is more so as decree holder has launched execution and obtained an order of attachment *qua* immovable property. To be noted, RFA has been filed after this attachment order.

[9] Ergo, the sequitur of the narration, discussion and dispositive reasoning thus far is, captioned MC is bereft of merits and it deserves to be dismissed. Captioned MC is dismissed. This Court imposes self-restraint on itself and refrains from imposing costs.

JUDGE

CHIEF JUSTICE

FR/NFR

Sushil/Bipin

P.S. I : Upload forthwith

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