The Accoutant General (A & E) vs Babul Malakar on 20 May, 2026

HIGH COURT OF TRIPURA
AGARTALA
IA_No.01 of 2026 in WP(C) 175 of 2026(D/O)

1. The Accoutant General (A & E), Tripura,
Kunjaban, Agartala, West Tripura, PIN-799006.

2. The Senior Accounts Officer, O/o the Accountant General (A & E)
Tripura, Kunjaban, Agartala, West Tripura, PIN-799006.

....Applicant/Petitioner(s).

Versus

1. Babul Malakar,
S/o Lt. Girendra Ch. Malakar, R/o Barjala, TRTC Road,
Ward No.3, Agartala, Tripura, represented by-
Manjushree Das Malakar, W/o Babul Malakar, R/o Barjala,
TRTC Road, Ward No.3, Agartala, Tripura.

....Respondent.

2. The State of Tripura, represented by the Secretary, Finance Department, Govt. of Tripura, Secretariat Building, New Secretariat Complex, Kunjaban, Agartala, PIN-799010.

2. The Director, Department of Audit, Office of the Directorate of Audit, Govt. of Tripura, P.N. Complex, Gorkhabasti, West Tripura, PIN 799010.

....Proforma-respondents.

BEFORE HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA For the Applicant/Petitioner(s) : Mr. Debalay Bhattacharya, Sr. Advocate.

Mr. Agniva Chakraborty, Advocate.

For the Respondent(s) : Mr. P. Roy Barman, Sr. Advocate.

Ms. Aradhita Debbarma, Advocate.

Date of hearing : 15.05.2026
Date of delivery of
Judgment & Order : 20.05.2026

Whether fit for reporting : YES NO

JUDGMENT & ORDER

This interim application has been filed by the petitioners seeking extension of two months' time for compliance of the judgment and order dated 19.06.2023, passed by this Court in WP(C) No.175/2026 [Babul Malakar & Anr. vs. the State of Tripura].

2. This Court in said writ petition directed the respondent nos. 3 and 4 of the original writ petition [the petitioners herein] to dispose of the claim of the original petitioner [respondent herein] in respect of his family pension as per procedure keeping in mind the relevant provisions of related rules and law within 4 (four) weeks of receipt of copy of the order.

3. Learned senior counsel, Mr. D. Bhattacharya for the petitioners submits that there are certain anomalies noticed in the documents of the writ petitioner [respondent herein], Babul Malakar, in respect of his date of birth and also that in the service record of his father, name of the son is mentioned as Govinda Malakar and not Babul Malakar and no document is also submitted from the side of the writ petitioner that said Govinda Malakar and Babul Malakar are the same person. It is also further submitted that to verify whether the disability of the petitioner existed prior to the death of the pensioner along with the nature, and the extent of such disability and whether there is any dependency and also the inability of the writ petitioner to earn for his livelihood in terms of the applicable pension rules, are also required to be verified and therefore, further two months' time is required.

4. Learned senior counsel, Mr. P. Roy Barman for the respondent (writ-petitioner) submits that it is the intention of the respondent nos.3 and 4 to somehow reject the claim of the petitioner Babul Malakar again and therefore, on this or that pretext they are causing delay in disposing of the application of the petitioner in violation of the direction of this Court.

5. During hearing a legal question is cropped up as to whether Court has the jurisdiction to extend time by modification of the order already passed by this Court in WP(C) 175 of 2026 or not, when after disposal of the said original writ petition, the Court has become functus officio.

6. According to learned senior counsel, Mr. D. Bhattacharya same is permissible and in this regard he also relies on a decision of Allahabad High Court in case of Shatrughan Yadav vs. State of UP, Thru. Secy. Revenue Lko. & 2 Ors. neutral citation No.2023:AHC- LKO:84978, decided on 21.12.2023.

7. Before entering into the merit of the petition for extension of time, this issue is required to be resolved.

8. In Mahanth Ram Das v. Ganga Das, 1961 SCC Online SC 71 [equivalent citation- AIR 1961 SC 882], the original suit was dismissed by the trial court. In appeal, High Court in Division Bench

decreed the suit with a direction to the appellant to pay the additional court fees as calculated by the office of the High Court within three months from the date of communication of the amount of the court fees by the registry, else the suit will be dismissed and if the court fees are paid within the stipulated time, the appeal will be allowed and suit will stand as decreed. During vacation, when the Division Bench was not sitting, a petition was filed for extension of time for one month for payment of the rest amount of court fees, as the appellant failed to deposit the full amount of court fees within time. When the matter was placed before the Division Bench, said prayer was rejected with observation that due to a previous order, already the appeal had been dismissed as court fees were not paid within time. The appellant then moved a petition under section 151, CPC and the Bench felt that proper remedy was review. The appellant thereafter filed a petition for review under Order 47, CPC read with section 151, CPC which was also ultimately dismissed holding that petition for review was not maintainable and even provisions of section 148 or 149, CPC were also not applicable as the same apply in pending suits only. Finally, in that backdrop, Hon'ble Supreme Court held as follows:

> "5. The case is an unfortunate and unusual one. The application for extension of time was made before the time fixed by the High Court for payment of deficit court fee had actually run out. That application appears not to have been considered at all, in view of the peremptory order which had been passed earlier by the Division Bench hearing the appeal, mainly because on the date of the hearing of the petition for extension of time, the period had expired: The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court in the order quoted, went by the letter of the original order under which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and section 149 is equally liberal. A fortiori, those sections could be invoked by the applicant, when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on July 13, 1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from July 8, 1954. How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding even though a final order had been passed. We need cite only one

> such case, and that is Lachmi Narain Marwari v. Balmakund Marwari (1). No doubt, as observed by Lord Phillimore, we do not wish to place an impediment in the way of Courts in enforcing prompt obedience and avoidance of delay, any more than did the Privy Council. But we are of opinion that in this case the Court could have exercised its powers first on July 13, 1954, when the petition filed within time was before it, and again under the exercise of its inherent powers, when the two petitions under section 151 of the Code of Civil Procedure were filed. If the High Court had felt disposed to take action on any of these occasions, sections 148 and 149 would have clothed them with ample power to do justice to a litigant for whom it entertained considerable sympathy, but to whose aid it erroneously felt unable to come".

9. Another decision of Hon'ble Supreme Court passed in Periyakkal v. Dakshyani, (1983) 2 SCC 127 is also deemed to be relevant in this context. In this case, the respondent sued to recover certain amount from the predecessor of the appellants. The suit was decreed with costs and, in execution of the decree, certain property of said original defendant was brought to sale. The decree-holder purchased the property at the execution sale. The appellants, filed an application under the provisions of Order 21 Rule 90 CPC for setting aside the sale on various grounds which was dismissed by the executing court but on an appeal the sale was set aside. The respondent i.e. original plaintiff later on filed a second appeal in the High Court. At the hearing of the second appeal the parties entered into a compromise and the Court made an order in terms of the said compromise that the appellants would deposit a sum of Rs 60,000 in full and final settlement of the decree. If the deposit was made on or before November 30, 1976, the sale would stand set aside and the second appeal would stand dismissed and if the amount was not deposited within stipulated time, the second appeal would stand allowed and the sale would stand confirmed. Time was stated to be the essence of the contract between the parties. Having failed to deposit said amount within the stipulated period, the appellants filed an application under Sections 148 and 151 of the Civil Procedure Code to extend the time for depositing the said amount. The High Court dismissed the application on the ground that the court could not extend time where time had been stipulated by the parties themselves in the compromise arrived at between them. Under those circumstances, Hon'ble Supreme Court held as follows:

> "4. In the case before us, the situation is totally different. Unlike the case of Hukumchand v. Bansilal [AIR 1968 SC 86 :
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> (1967) 3 SCR 695 : (1968) 2 SCJ 32] where there was a statutory compulsion to confirm the sale on the dismissal of the application under Order 21 Rule 90 and, therefore, postponement and further postponement of the confirmation of the sale could only be by the consent of the parties, in the case before us, there was no statutory compulsion to dismiss the application under Order 21 Rule 90 in the absence of an agreement between the parties. The court would have then decided the appeal arising out of the application on the merits.

The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time

allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True the court would not rewrite a contract between the parties but the court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the court, the court's freedom to act to further the ends of justice would surely not stand curtailed. Nothing said in Hukumchand case [AIR 1968 SC 86 : (1967) 3 SCR 695 :

> (1968) 2 SCJ 32] militates against this view. We are, therefore, of the view that the High Court was in error in thinking that they had no power to extend time....."

10. Further in case of K.A. Ansari v. Indian Airlines Ltd., (2009) 2 SCC 164, though in a different context, Hon'ble Supreme Court holds that even if, where the writ petition is finally disposed of, the Court can entertain miscellaneous application seeking clarification of the order passed by the Court during said final disposal, when no fresh cause of action has arisen for such subsequent misc. application. The relevant paragraphs containing the observations of the Apex Court are also reproduced below-

> "17. It is trite that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning. (See State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319] , SCC p. 188, para 10.) At the same time, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words.
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> 18. Therefore, the question for consideration in the instant case is whether the miscellaneous application preferred by the first appellant could be said to be founded on a fresh cause of action?
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> 19. Having bestowed our anxious consideration on the rival submissions, we are of the opinion that keeping in view the terms of the final order dated 11-10-2004, the miscellaneous application could not be said to be founded on a separate or fresh cause of action so as to fall foul of the aforenoted legal position viz. on termination of proceedings by final disposal of writ petition, it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided fresh cause of action.
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> 20. It is manifest that in Direction (ii), the learned Single Judge had clearly directed that the writ petitioners would be entitled "to be posted to a post in equivalent scale held by them when the letter dated 23-4-2003 was issued". The respondent Indian

> Airlines was obliged to obey and implement the said direction. If they had any doubt or if the order was not clear, it was always open to them to approach the court for clarification of the said order. Without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever. Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation.
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> 21. In our opinion, in the miscellaneous application, no fresh relief, on the basis of a new cause of action, had been sought. It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when letter dated 23-4-2003, was issued. This was precisely done by the learned Single Judge vide his order dated 4-3-2005.
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> 22. Without examining those factual aspects of the matter, in our judgment, the Division Bench was in error in holding that after the disposal of the writ petitions, miscellaneous application was not maintainable and the only remedy available to the appellant was to approach the authorities and if his interpretation was not acceptable to them, then he could file a fresh writ petition."

11. In Shatrughan Yadav (supra) also the Allahabad High Court observes that the application for extension of time prescribed in a decided writ petition is maintainable provided that the reasons are properly and categorically explained and the bona fide of such authorities are shown, subject to condition that the same would not change the nature of the final judgment and order and further no subsequent event is brought for adjudication afresh.

12. Our High Court also vide order dated 22.05.2023, passed in IA No.1 of 2023 arising out of WP(C) 600 of 2022(D/O); in IA No.1 of 2023, vide order dated 19.10.2023 arising out of WP(C) 996 of 2022 and in IA No.1 of 2023 arising out of WP(C) No.290 of 2023(D/O), vide order dated 11.12.2023, similarly extended the time for compliance of the directions passed in the writ petitions. However, in those petitions, the jurisdictional issue was not involved and therefore was not discussed.

13. Thus, taking note of above said decisions, it is quite clear that a High Court always retains its inherent power to extend the period of the compliance of its direction provided there is no new cause of action arisen on any subsequent event or otherwise, and the same is not going to otherwise affect the decision of the Court already rendered after adjudication of the main case. It is an ancillary jurisdiction exercised by the Court to make its order more effective and to facilitate it's compliance in its true spirit.

14. Now, coming to the merit of this petition, it appears that according to the present petitioners they have noticed certain discrepancies in the documents of the writ petitioner, Babul Malakar and therefore, for verification of the same they are seeking extension of time. Prima facie such extension of time does not appear to be mala fide. Therefore, the prayer of the petitioners is allowed.

15. The petition for extension of time was filed on 20.04.2026, therefore, meanwhile they have already got about four weeks' time to make such verification. Considering thus, only two weeks' further time is granted to them.

16. The petitioners will comply with the order passed in the writ petition within next two weeks.

17. The IA is, accordingly, disposed of.

JUDG

SAIKAT KAR Digitally signed by SAIKAT KAR
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Sanjay