

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

MC(MFA) No.1 of 2023

Ref: MFA Case No. of 2023

1. Kumari Amom Mema Devi, aged about 58 years, D/o (Late) A. Borajaoba Singh of Taobungkhok Awang Leikai, P.O. Langjing, P.S. Lamphel, Imphal West District, Manipur-795003

... Petitioner

-Versus -

1. Kumari Thokchom Manglembi Devi, aged about 58 Years, D/o (Late) Th. Gobordhon Singh of Sagolband Nepra Major, P.O. & P.S. Imphal West District, Manipur – 795001 and Anr.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE MV MURALIDARAN

For the applicant : Mr. K. Modhusudon, Advocate.
For the respondents : None appeared.
Date of Hearing : **09.10.2023**
Date of Judgment & Order : **30.10.2023**

JUDGMENT & ORDER
CAV

[1] This petition has been filed by the petitioner under Section 5 of the Limitation Act to condone the delay of 415 days in filing the appeal against the judgment and decree dated 21.12.2019 passed in O.S.No.105 of 2017 on the file of the Civil Judge (Senior Division), Imphal West.

[2]. O.S.No.105 of 2017 has been filed by the petitioner against the respondents for recovery of a sum of Rs.25,07,500/- together with interest and costs. By the judgment and decree, the said suit was dismissed on 21.12.2019. Aggrieved by the same, the petitioner has filed the appeal along with petition for condonation of the delay of 415 days.

[3]. Mr. K. Modhusudon, the learned counsel for the petitioner submitted that the judgment and decree of the suit was not declared on 21.12.2019, however, the e-court status, it was shown that the said case was disposed of on 21.12.2019 as uncontested. The learned counsel would submit that the suit was last listed on 15.5.2019 and fixed on 6.6.2019 for orders. However, the order was not declared on 6.6.2019 and subsequently fixed the dates on 10.7.2019, 14.8.2019, 10.9.2019, 19.10.2019, 8.11.2019, 17.12.2019 and 21.12.2019. Thereafter, the learned counsel for the petitioner requested the Court regarding the matter on several occasions and the Court also informed that the matter would be checked, however, despite several efforts, the case was untraceable.

[4]. The learned counsel further submitted that after closing the Court since March, 2020 due to Covid-19 pandemic, the Court works were totally suspended. In the month of September, 2021 while some restrictions were removed, the learned counsel for the petitioner approached the concerned staff of the Court, but the file could not be traceable. On 23.9.2021, the learned counsel for the petitioner filed a complaint before the Registrar General of the High Court for giving appropriate direction to the concerned staff of the trial Court to trace the file of the suit. However, no order was declared till 23.9.2021. After the filing of the complaint before the Registrar General on 23.9.2021, the learned counsel for the petitioner approached the Registry of the Civil Judge on 18.10.2021 and one of the staff namely Anil informed that the case record was now found, however, no order is available in the case file. Thereafter, on 26.10.2021, the learned counsel for the petitioner came to know that the suit was disposed of on 21.12.2019 in favour of the respondents while he was informed by the said staff. On the same day, the learned counsel for the petitioner applied the certified copy of the judgment and the same was received on 8.11.2021.

[5]. The learned counsel for the petitioner submitted that due to bonafide mistake, the petitioner has filed an appeal against the judgment and decree dated 21.12.2019 along with delay condonation application in Judicial Misc. Case No.64 of 2021 on 24.11.2021 before the District Judge, Imphal West. The learned District Judge condoned the delay and fixed the appeal, being RFA No.4 of 2022 and fixed the appeal for hearing. At the time of hearing, the learned counsel for the petitioner withdrew the said appeal with liberty to file a fresh one in the competent Court having jurisdiction to file the case and, accordingly, RFA No.4 of 2022 was disposed of on 25.1.2023. The learned counsel further submitted that thereafter, the petitioner has filed the present appeal before this Court along with application for condonation of delay.

[6]. According to the learned counsel for the petitioner, the cause of delay in filing the present appeal was beyond the capacity of the petitioner, as the case record was traceable only on 18.10.2021. The petitioner came to know that the case was disposed of only on 26.10.2021 and due to bona fide mistake, the petitioner approached to the wrong forum. As such, the matter

was pending before the learned District Judge, Imphal West from 24.11.2021 to 25.1.2023 and the certified copy of the order dated 25.1.2023 was applied on the same day and received on 6.4.2023.

[7]. The learned counsel for the petitioner urged that the petitioner is an innocent and have no negligence on her part for non-filing the appeal in time, but the same was caused by some unavoidable circumstances and due to bonafide mistake the appeal was pending before the wrong forum. As such, there was a delay of 1201 days in filing the present appeal from 21.12.2019 till 05.04.2023. The Hon'ble Supreme Court, vide order dated 10.1.2022 in MA.No.21 of 2022 in Su-motu Writ Petition (c) No.3 of 2020, exempted the period from 15.3.2020 to 28.2.2022 for limitation. According to the learned counsel, after excluding the exempted period of 715 days and also the time taken for getting the certified copies i.e. 71 days, totally 786 days, a delay of 415 days occurred in filing the present appeal. If the said delay is not condoned and the appeal is not registered, the petitioner will put to irreparable loss and damage. Further, the said delay is neither wilful nor wanton. Thus, a prayer has been made to condone the delay.

[8]. This Court considered the submissions made by the learned counsel for the petitioner and also perused the materials available on record.

[9]. The petitioner seeks to condone the delay of 415 days in filing the appeal on the ground that despite several efforts, the case file was not traceable before the trial Court and after making complaint before the Registrar General of this Court on 23.9.2021 and upon the information given by one of the staff of the trial Court, only on 26.10.2021, the petitioner came to know the disposal of the suit on 21.12.2019. Thereafter, the petitioner applied certified copy of the judgment and the same was received on 8.11.2021. After the receipt of the certified copy of the judgment, the petitioner has filed the appeal before the District Judge, Imphal West against the judgment dated 21.12.2019 with application for condonation of delay. After condoning the delay, the appeal was numbered as RFA No.4 of 2022 and during the course of hearing, the petitioner came to know that she has approached the wrong forum and, accordingly, the petitioner through her counsel withdrawn the said appeal with liberty to file a fresh before the competent Court having jurisdiction to file the

same. Accordingly, RFA No.4 of 2022 was dismissed as withdrawn on 25.1.2023 with liberty to approach the appropriate forum. Thereafter, the petitioner has filed the present appeal before this Court with delay condonation application.

[10]. On a perusal of the judgment of the trial Court, it is seen that the suit was taken up for hearing on 15.5.2019 and the Court had delivered the judgment on 21.12.2019. It appears that the trial Court after a gap of seven months has delivered the judgment in the suit. According to the petitioner, though the judgment was delivered on 21.12.2019, physically the case record was not traceable when the learned counsel verified with the Registry of the trial Court and at the time of verification, the judgment and decree were not available in the case file.

[11]. According to the learned counsel, due to Covid-19 pandemic, the Court works were totally suspended since March, 2020 and in the month of September, 2021, some restrictions were removed and during the month of September, 2021 when the learned counsel for the petitioner approached the trial Court, he could not able to find the case file. Thereafter, the petitioner has filed a complaint before the Registrar General of this Court and upon the intervention of this Court, the case file was traced.

Only on 26.10.2021 only the petitioner's counsel was able to know the disposal of the suit on 21.12.2019.

[12]. The plea of the petitioner is that due to bona fide mistake, she has filed the appeal before the District Court and after knowing the factum of approaching the wrong forum, the said appeal was withdrawn with liberty to file the fresh before the appropriate forum. In this regard, no contra evidence has been produced by the respondents. Therefore, this Court is of the view that there is some substance in the plea of the petitioner.

[13]. Application under Section 5 of the Limitation Act is to be construed liberally so as to do substantial justice to the parties. In the present miscellaneous case, the applicants have stated the cause for the delay, which is the sufficient cause

[14]. The question as to what would be held to be sufficient cause while considering the application for condonation of delay came up for consideration in the case *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others*, (2013) 12 SCC 649, wherein upon considering the obligation of the Court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation, the

principles to be applied were summarized by the Hon'ble Supreme Court as under:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

***21.1.** (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

***21.2.** (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

***21.3.** (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

***21.4.** (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

***21.5.** (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

***21.6.** (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

***21.7.** (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

[15]. In *Collector, Land Acquisition, Anantnag and another v. Katiji and others*, (1987) 2 CC 107, the Hon'ble Supreme Court held:

"3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". 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-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

*2. **Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this***

when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. ***"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.***
4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the

same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

(emphasis supplied)

[16]. In *State of Nagaland v. Lipok AO and others*, (2005) 3 SCC 752, the Hon'ble Supreme Court held thus:

"15. *It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit.*

No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants."

[17]. Refusal to condone the delay would result in denying the petitioner in preferring the appeal against the judgment and decree dated 21.12.2019. There is no presumption that delay in

approaching the Court is always deliberate. As held by the Hon'ble Supreme Court, the word "sufficient cause" under Section 5 of the Limitation Act should receive liberal construction so as to advance substantial justice.

[18]. The petitioner is not to gain by delay. The reasons are spelt out in the petition. It is trite that if the technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be subserved.

[19]. Applying the aforesaid principles to the case on hand, it would be seen that the present petition seeking condonation of delay spelt out the reasons for the delay in filing the appeal and the reasons specified in that regard could not be held to be insufficient and no want of bonafides could have been imputed to the petitioner.

[20]. That apart, the petitioner has shown sufficient cause for the delay. In fact, most of the delay period covers with Covid-19 pandemic and, in this regard, the Hon'ble Supreme Court also excluded the delay for the period from 15.3.2020 till 28.2.2022 in Suo-motu Writ Petition (C) No.3 of 2020 dated 10.1.2022 and after excluding the aforesaid period, the Hon'ble Supreme Court

fixes the limitation period by saying all persons shall have a limitation period of 90 days from 1.3.2022. The petitioner/State has also filed calculation sheet along with the petition showing the number of days delay. In the given facts and circumstances of the case and also the nature of suit, this Court is of the view that liberal approach has to be adopted in the present case as the delay has been sufficiently explained by giving adequate reasons by the petitioner. The present petition ought not to be rejected on some hyper technical reasoning. That apart, the petitioner has shown sufficient cause for the delay.

[21]. For all the reasons stated above and having satisfied with the explanation for the delay, this Court is inclined to condone the delay of 415 days in filing the appeal.

[22]. In the result, MC (MFA) No.1 of 2023 is allowed. No costs.

[23] The Registry is directed to number the appeal if it is otherwise in order and post for motion.

JUDGE

FR/NFR

Ab.Surjit