

**HIGH COURT OF TRIPURA**  
**AGARTALA**

IA No.1/2023 in RFA No.7/2023.

1. Peerless Tea Industry Limited, 240B, AJC Bose Road, Kolkata - 700020.

Authorized representative :

Sri Jaydeep Ganguly, (aged 54 years),  
S/o Lt. Jayanta Ganguly, Fatikcherra Tea Estate,  
P.O. Fatikcherra, PS : Lefunga, District : West Tripura.

2. The managing Director, M/S. Peerless Tea & Industry Ltd., 240/B, A.J.C Basu Road, 3<sup>rd</sup> Floor, Kolkata - 700 020.
3. The Director, M/S. Peerless Tea & Industry Ltd., A.J.C Basu Road, 3<sup>rd</sup> Floor, Kolkata - 700 020.
4. The Manager, Fatikcherra Tea Estate, Faticherra, West Tripura District, The State of Tripura.

..... Applicant(s).

Vs.

Tripura Tea Development Corporation Limited, represented by its Managing Director, Lake Chowmohani, Agartala, P.O - Agartala, P.S. - West Tripura, District - West Tripura, Pin – 799 001.

..... Respondent(s).

**\_B\_E\_F\_O\_R\_E\_**

**HON'BLE MR. JUSTICE ARINDAM LODH**  
**HON'BLE MR. JUSTICE S DATTA PURKAYASTHA**

For Applicant(s) : Mr. B. N. Majumder, Sr. Advocate,  
Mr. Rajib Saha, Advocate,  
Mr. S. C. Sen, Advocate.

For Respondent(s) : Mr. Samarjit Bhattacharjee, Advocate,  
Mr. B Saha, Advocate.

Date of hearing : 30<sup>th</sup> November, 2023.

Date of judgment : **7<sup>th</sup> December, 2023.**

Whether fit for reporting : Yes.

**J U D G M E N T**

S Datta Purkayastha, J.

The judgment dated 19/9/2009 and consequent decree thereof passed in Money Suit No.27 of 2006 by Civil Judge (Senior Division), Court No.1, West Tripura, Agartala, are placed on challenge in the instant appeal along with

an application/petition for condoning a delay of 4855 days in preferring the instant appeal (RFA No.7/2023).

[2] As surfaced in the petition, after filing of said suit on 27/9/2006 notice was only served on defendant No.4 without any service upon other 3 defendants(*appellants herein*) and was decreed *ex parte* on 19/9/2009 followed by filing of an application by the present appellant-petitioners for setting aside said *ex parte* decree culminating to rejection thereof on 08/02/2012. The appellants thereafter preferred FAO No.1/2012 against said order of rejection which was also dismissed on 22/02/2016 by the High Court.

[3] It is also averred by the appellant-petitioners that earlier in the year 2004 another writ petition bearing number WP(C) No.401/2004 was instituted between the parties which was allowed on 08/5/2015 with the following observations :

*“23. Having regard to the decision of the Govt. of Tripura as reflected in the communication dated 12.08.2014 (Annexure P/2), it appears that, now the Government has determined the compensation at `6.00, meaning the previous amount as determined by the Committee, is no more insisted on. However, since the said ex parte decree appears to be in existence, this court would not pass any further observation as regards its executability on face of the said development.”*

[4] Due to such observations, the appellants, as asserted by them, were of the impression that the Government would not press for any execution of said *ex parte* decree, rather to enforce the aforesaid judgment, the appellants filed another writ petition bearing No.WP(C) 257/2016, wherein some defence was provided by the High Court to the appellants vide judgment dated 27/9/2016 and as a result, the execution petition of above said *ex parte* decree was dismissed on 15/12/2018. The State Government and the respondent, thereafter,

filed 2(two) writ appeals bearing No.WA 2/2017 and WA 11/2017 challenging the said judgment passed in WP(C) No.257/2016, wherein no stay order was granted by the High Court and consequently, as averred, the interest of the appellants were protected. Both the aforesaid writ appeals were disposed of on 04/12/2020 by setting aside the judgment of WP(C) No.257/2016 in absence of the appellants and, therefore, the result of the said appeals were not within the knowledge of the appellants.

[5] It is also stated by the petitioners that in the month of August, 2022 the appellants received the notice of one execution proceedings in respect of execution of said *ex parte* decree and thereby came to know about the result of above said two writ appeals. As paragraph No.7 of the impugned judgment of WP(C) No.257/2016 was expunged, the present appellants preferred two review petitions bearing numbers Rev. Pet.61/2022 and Rev. Pet.62/2022 which were also rejected on 16/03/2023. Thereafter, with all promptitudes the appellants obtained the opinions of all the Directors of the company, contacted with their advocate and ultimately, filed the present appeal on 12/4/2023.

[6] Describing such entire chequered history, learned Sr. Advocate Mr. B N Majumder, strenuously submitted that throughout the entire long period of litigations, the appellants pursued their causes most diligently. There was no negligence or deliberate inaction on the part of the appellants and therefore, the period of such delay, howsoever, on the bigger side, may be condoned to render substantial justice to his clients. Learned senior advocate also referred the following decisions of the Apex Court :-

1. In *N Balakrishnan Vs. M. Krishnamurthy, Air 1998, Supreme Court 3222*, it was observed that in every case of delay there can be

some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of the dilatory strategy, the court must show utmost consideration to the suitor. But, when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss.

2. In *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*, 2013 AIR SCW 6158 - at para 15, the following broad principles in the matter of condonation of delay were curved out by the Apex Court :

*“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.*

*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.*

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

*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.*

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

*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.*

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

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.*

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.*

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.*

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.*

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

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

3. In ***Bhivchandra Shankar More Vs. Balu Gangaram More & Ors.***, (2019) 6 SCC 387, the relevant observation was that the words "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of *bona fide* could be imputable to the appellant.

4. In ***N. Mohan Vs. R. Madhu***, AIR 2020 Supreme Court 41, it was observed that an appeal under section 96(2) CPC is a statutory remedy, the defendant cannot be deprived of the statutory right merely on the ground that earlier, the application filled under Order IX Rule CPC was dismissed. Whether the defendant has adopted the dilatory tactics or where there is a lack of *bona fide* in pursuing the remedy of appeal, has to be considered depending upon the facts and circumstances of each case.

[7] Learned Counsel for the respondent-Corporation Mr. Samarjit Bhattacharjee, on the contrary, argued that there were deliberate laches and negligence on the part of appellants and the present appeal with the petition for condoning the delay has been filed only to harass the respondent. Learned counsel also argued that it was untrue that no notice in above said Money Suit No.27/2006 was served upon all the present appellants. According to him, there is no valid explanation from the side of appellants for condoning the delay of more than 13 years in filing the present appeal. Mr. Bhattacharjee, learned counsel, also referred to one decision of the Apex Court in *State of Madhya Pradesh and Others Vrs. Vherulal* reported in (2020) 10 SCC 654 wherein some sort of caution was given by the Apex Court to all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was a *bona fide* effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable decree of procedural red-tape in the process. The Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment.

[8] Law is settled that liberal, pragmatic and justice-oriented approach should be given by the court in the matter of condonation of delay and the substantial justice should be placed on paramount consideration. The concept of 'liberal approach' should be applied with all reasonableness. However, conduct, behaviour and attitude of a party relating to any inaction or negligence are relevant factors to be considered on the given facts of a case. The gross negligence on the part of either the litigant or his counsel is also relevant to be taken note of along with lack of *bona fides* on the part of the litigant. Court should be careful to see that no one can take recourse to the technicalities of the

law of limitation by way of fraud, misrepresentation or interpolation. If the explanations offered are results of concoction or fancifulness, Court should be vigilant not to lead the other side to harassment with the prolongation of litigation.

[9] In the present case, the judgment passed by learned Single Judge in FAO No.1/2012 dated 22/02/2016 demonstrates that all the appellants entered their appearance in the original suit bearing No.MS 27/2006 but later on, exhibited deliberate negligence and inaction for which ultimately this suit was decided *ex parte*. Even when on 22/02/2016 FAO No.1/ 2012 was dismissed by the High Court, they did not file any appeal against the *ex parte* judgment and decree under Section 96 of CPC and remained inactive for about 7 years. Though the appellants asserted that due to judgment passed in WP(C) No.401/2004 and by subsequent judgment passed in WP(C) No.257/2016 their interests were protected but in the common judgment dated 04/12/2020 passed by the Division Bench in WA Nos.2 and 11 of 2017, it was clearly observed that the matters involved in the above said civil suit filed by the State Government and the writ petition No.WP(C) 257/2016 filed by the Peerless Tea Industry Limited were entirely different. While the claim of Peerless was based on its right to receive just compensation for loss of right to use the Tea Estates, the claim of the Government in the civil suit was based on higher capital investment compared to the sale realization of the produce of the Estate. In light of the above observation, there was no scope for the appellants to presume that their interests were protected by the judgment passed in the writ petition bearing No.WP(C) 257/2016. Even the said judgment further shows that the present appellant even did not appear before the High Court to contest the writ appeals despite being noticed duly.

[10] Though, after passing of the said common judgment by the Division Bench, the appellant preferred two review petitions bearing No.Rev. Pet.61/2022 and Rev. Pet 62/2022 but there also they were found to be negligent since none participated in the final hearing and ultimately, both the petitions were rejected. Such conduct of the appellants since institution of MS 27/2006 till disposal of the review petitions are worth noting regarding their lack of *bona fides*, inaction and gross negligence in pursuing their own cause and interests. Both the writ appeals were disposed of on 04/12/2020 and the appellants are asserting that they were not aware of the result of those writ appeals until they got notice of one execution proceeding in August, 2022 which further shows that for about 1 year and 8 months since the disposal of said writ appeals, they did not try to gather any information about those two writ appeals. Even if the version of the appellants that on 15/8/2022 they got the information of pendency of execution case bearing No.Execution(M) 02 of 2010, is taken into consideration still they further consumed about 8 months in filing the instant appeal without sufficient reason. Therefore, it cannot be said that the appellants were pursuing their causes with all diligence and in *bona fides* throughout all the phases of litigations deserving any favourable consideration by the Court.

[11] Considering thus, the petition for condoning the delay is rejected.

The interlocutory application is, accordingly, disposed of.

**J U D G E**

**J U D G E**

**SATABDI DUTTA**

Digitally signed by SATABDI DUTTA  
Date: 2023.12.08 15:46:53 +06'00'

Riki