

Serial No. 24
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

FA No. 1 of 2020

Date of Decision: 01.05.2023

Shri Nikson Nongrum **Vs.** Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)/Appellant(s): Mr. M.F. Qureshi, Adv. with
Mr. L. Koch, Adv.

For the Respondent(s) : Dr. N. Mozika, DSG with
Ms. S. Rumthao, Adv.

i) Whether approved for reporting in Yes/No
Law journals etc:

ii) Whether approved for publication Yes/No
in press:

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. M.F. Qureshi, learned counsel for the appellant and Dr. N. Mozika, learned DSG assisted by Ms. S. Rumthao, learned counsel for the respondents.

2. The appellant being aggrieved with the orders of the District and Sessions Judge, dated 17.04.2019 and 02.05.2019 is before

this Court on the ground that the application of the appellant for setting aside abatement, condonation and substitution was dismissed by the Court below, without the merits having been gone into.

3. Mr. M.F. Qureshi, learned counsel for the appellant submits that the predecessor in interest of the appellant, who was also his mother had filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the award in Arbitration Case No. ARB/BKB/2003/2, dated 23.03.2005. The learned counsel submits that his mother expired on 04.01.2015, and after a lapse of some time on 23.02.2016, the appellant had filed an application under Order 22 Rule 3 for substitution. However, he submits the same was dismissed on 17.04.2019 on the ground that the same was barred by limitation, and that no application for condonation of delay had been filed by the appellant.

4. Thereafter, he submits the appellant had filed a consolidated petition for setting aside the abatement, condonation of delay and also for substitution in the said Arbitration Case, which by order dated 02.05.2019 was dismissed in a most cryptic manner, without going into the merits of the case. He submits that the order being bad in law is liable to be set aside, and the lower Court be directed to take up the application for consideration and to pass orders on merits.

5. Dr. N. Mozika, learned DSG assisted by Ms. S. Rumthao, learned counsel for the respondents submits that the order dated 17.04.2019 passed by the lower Court, dismissing the substitution application remained un-challenged, and as such the Arbitration Case having abated and no substitution being allowed, the subsequent application was without any basis. The learned Senior counsel also contended that the application in this form is also not maintainable and was rightly dismissed by the learned District and Sessions Judge.

6. I have heard the learned counsel for the parties.

7. It is undisputed that the substitution application by the appellant was filed after a considerable delay of 325 days, for which no condonation application was filed, as such came to be dismissed by order dated 17.04.2019.

8. A perusal of the application thereafter filed on 30.04.2019 shows that it is in a consolidated fashion, whereby three prayers have been made i.e. for condonation of delay of 1426 days, for setting aside of the abatement of the Arbitration Case and also for substitution of the appellant. The contents of the application apart from re-agitating a prayer that already stood rejected, also did not offer any explanation for the long delay nor any ground made out for setting aside the abatement. Though, the order of the learned District and Sessions Judge seems cryptic, on examination no interference is called for by this

Court, as it is also noted that the substitution having been rejected by order dated 17.04.2019, the application was also barred by the principles of res judicata, and as such the prayers could not have been entertained in any manner.

9. For the aforesaid reasons, there being no merit in the appeal, the same is dismissed and disposed of.

JUDGE

Meghalaya
01.05.2023
"V. Lyndem-PS"

