

GAHC010013902013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/274/2013

HASIM ALI
S/O LT. MUNCHI NASIRUDDIN, R/O VILL. PURAN BIJNI, PS. BIJNI, DIST.
CHIRANG, ASSAM.

VERSUS

SAN BHANU and 5 ORS.
W/O PIR MOHAMMAD.

2:PIR OHAMMAD
S/O LATE. BASIR ALI

3:JIYAUL HOQUE

S/O PIR MOHAMMAD

4:SAIFUL HOQUE

S/O PIR MOHAMMAD

5:MOTIUR HOQUE

S/O PIR MOHAMMAD

6:HAJERA KHATUN

D/O HAJIRUDDIN SHEIKH
ALL ARE THE R/O VILL. PURAN BIJNI
PS. BIJNI
DIST. CHIRANG
ASSA

Advocate for the Petitioner : MR.M U MAHMUD

Advocate for the Respondent : MRA KUNDU

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. M. U. Mahmud. Advocate.

For the Respondents : Mr. S. Bhuyan, Advocate.

Date of Hearing : 19.05.2023

Date of Judgment : 21.07.2023.

JUDGMENT & ORDER (CAV)

1. Heard Mr. M. U. Mahmud, learned counsel for the appellant. Also heard Mr. S. Bhuyan, learned counsel for the respondents.
2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the order dated 22.08.2013 passed by the learned Civil Judge, Bongaigaon in Title Appeal No. 21/2022, whereby the appeal preferred by the appellant against judgment and order dated 15.12.2011 passed by the learned Munsiff, Bijni in Title Suit No. 44/2008, was dismissed being barred by limitation.
3. The appellant as plaintiff instituted a suit registered as Title Suit No. 44/2008 against the respondent herein seeking right, title and interest of the plaintiff over the suit land and recovery of khas possession thereof. Said suit was dismissed by the learned trial Court by its judgment and decree

dated 15.12.2011.

4. Being aggrieved the plaintiff preferred an appeal before the learned Civil Judge, Bongaigaon. However, while preferring such appeal, there was delay of 341 days. Accordingly, the appellant filed an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 341 days. Said application was registered as Misc.(J) Case No. 73/2012. The respondent resisted such application by filing a written objection.
5. The basic grounds of delay as explained, were that appellant was an illiterate daily wage earner and he left for guwahati during the pendency of the suit and on 22.08.2010 leaving his wife at daughter's matrimonial home as he was a labour in a Truck manufacturing company at guwahati. He also pleaded that before leaving for Guwahati, he met his lawyer at Bijni and his lawyer assured that he will take necessary steps in his case and will intimate the petitioner, if required. When the appellant met the learned counsel after returning from Guwahati, the learned counsel returned him the brief. Thereafter, as the appellant being an illiterate person did not understand about the fate of the case, met another Advocate and after verification, the said advocate intimated him that his case was dismissed on 17.12.2011. Thereafter, according to the appellant, said advocate applied for the certified copy which was delivered to him on 03.07.2012. Thereafter the said lawyer advised him to prefer an appeal before the Higher Court, and accordingly, appeal was filed within three days by the learned counsel.
6. Such plea was resisted by the respondent that the poor financial condition of the appellant cannot be a ground as he has not filed the appeal as an indigent person. They also raised objection that the appellant

has failed to file delay condonation petition in time.

7. The learned appellate Court dismissed such application on the ground that there was willful negligence on the part of the appellant as the impugned judgment was passed on 15.12.2011 and he met the engaged advocate on 16.12.2012. Accordingly the delay was not condoned. Consequently, the appeal was dismissed. Being aggrieved, the present appeal is preferred.
8. This Court admitted this second appeal on 13.12.2013 on the following substantial question of law.

“Whether the first appellate Court was justified in refusing to condone the delay of 341 days in preferring the appeal”.

9. Though notice has duly been served, none appears for the respondent to contest the second appeal.
10. The Hon'ble Apex Court in ***Esha Bhattacharjee vs- Managing Committee of Raghunathpur Nafar Academy***, reported in ***(2013) 12 SCC 649***, after elaborately relying on the earlier decision of the apex Court at paragraphs 15 & 16 culled out the following principles:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

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.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters”.

11. In the case in hand, the learned appellate Court has not dealt with the explanation given by the appellant at all. The appeal was dismissed only on the ground that the suit was dismissed on 15.12.2011 and appellant made his lawyer on 16.12.2012 and therefore, the appellant was negligent. Only for the reason that the appellant met the lawyer after one year, cannot lead to a final conclusion that the appellant was negligent inasmuch as the explanation given by the appellant that he was a labour working at

Guwahati and his lawyer assured him of information regarding the case was not at all dealt by the Appellate Court. The learned appellate Court ought to have considered such statement, however, the learned appellate court did not even refer to the explanation given by the appellant while arriving at his decision. Thus, in the considered opinion of this Court, the impugned order has been passed in ignorance of the settled proposition of law as discussed hereinabove. Such settled proposition of law had a material bearing on the decision of the case and the right of the appellant.

12. As held by the Hon'ble Apex Court in the case of ***Santosh Hajari Vs Purushuttom Tiwary (2001) 3 SCC 179***, the paramount overall consideration before a Court is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis.
13. In the considered opinion of this Court, the cause of delay shown by the appellant cannot be termed as a gross negligence inasmuch as the learned Court below ought not to have attached presumption to causation of delay. From the explanation, this Court also donot find any lack of bonafide inasmuch as it is not a determination of the appellate Court either. In the case in hand no prejudice shall be caused in condonation of delay inasmuch as it is the appellant whose suit for title and possession was dismissed. Therefore, this Court is of the considered opinion that the appellant was able to show sufficient causes in preventing him in filing the appeal within the prescribed period of time.
14. This Court is of the opinion that the legal provision as discussed hereinabove was clear on account of the aforesaid binding precedent.

However, the Court below has decided the matter ignoring such settled legal principles. Accordingly, the present second appeal is allowed by setting aside the impugned order dated 22.08.2013 passed by the learned Civil Judge, Bongaigaon in Title Appeal No. 21/2022. The learned appellate court to register the appeal and proceed to hear the same in accordance with law.

15. Prepare a decree accordingly. Send back the LCR. Parties to bear their own cost.

JUDGE

Comparing Assistant