

GAHC020000332020



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

Case No. : I.A.(Civil)/11/2020

UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001

2: DIRECTOR GENERAL OF ASSAM RIFLES

3: INSPECTOR GENERAL OF ASSAM RIFLES (NORTH)

4: COMMANDAN

VERSUS

H. CHINGTICK KONYAK
S/O LATE. HAMJE KONYAK
R/O BAMJONG COLONY NAGINIMORA,
DISTRICT MON, NAGALAND

Advocate for the Petitioner : YANGER WATI

Advocate for the Respondent : B. N. SARMAH

Linked Case : FA/3/2020

UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY
MINISTRY OF HOME AFFAIRS
NEW DELHI- 110001

2: DIRECTOR GENERAL OF ASSAM RIFLES
HEAD QUARTER
SHILLONG
MEGHALAYA

C/O 99 APO

3: INSPECTOR GENERAL OF ASSAM RIFLES (NORTH)
NAGALAND
KOHIMA

4: COMMANDANT
35 ASSAM RIFLES

MON
NAGALAND
VERSUS

H. CHINGTICK KONYAK
S/O LATE. HAMJE KONYAK

R/O BAMJONG COLONY NAGINIMORA

DISTRICT MON
NAGALAND

Advocate for : YANGER WATI
Advocate for : B. N. SARMAH appearing for H. CHINGTICK KONYAK

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

ORDER

Date : 20-03-2023

Heard Mr. Yangerwati, the learned CGSC for the applicant, and Mr. B.N. Sarma, the learned counsel for the opposite party.

This application has been filed under Section 5 of the Indian Limitation Act, 1963 praying for condonation of delay of 411 (Four

hundred and eleven) days in filing the connected appeal. The grounds for the delay have been stated by the applicant in paragraphs 7, 8 and 9 of the application which is reproduced as follows:

"7. That thereafter a Interlocutory Application No. 167/2019 was filed along with Civil Revision Petition was filed before this Hon'ble Court, however, the same was withdrawn with liberty to file afresh due to some technical difficulties.

8. That in the process of transferring of the relevant files from one office to another and also due to pursuing the case in the wrong forum, there is some delay in filing the First Appeal.

9. That having received the draft petitioners, the applicants took some reasonable time for vetting and thereafter sent back the draft petition for preparation of the Final First Appeal along with the Interlocutory application, further sent to the Inspector General of Assam Rifles (IGAR) North. Thereafter, the IGAR (North) sent the Appeal petition and Interlocutory Application for authorization signature, i.e. to the Commanding Officer, 35 Assam Rifles stationed at Mon: Nagaland and during such process, there has been a delay of 411 days in filing the First Appeal before this Hon'ble Court. "

Mr. B.N. Sarma, the learned counsel for the opposite party has raised objection to the application which is incorporated in paragraphs 5, 6, 7 and 8 of the written objection. The same reads as follows:

*"5. That the petitioner/Appellant utterly failed to explained day to day delay of 441 days by giving cognate and reliable explanation supported by documentary evidence. The petitioner/appellant **out of the total 441 days** trying unsuccessfully to explain only for 350 days thereby **91 days delay remains unexplained.***

6. That the deponent submits that the petitioner/appellant vaguely stating inter alia that the delay caused for filing of interlocutory petition due to movement of filed from one table to another, also not giving any dates in what way the concerned file was moved from one table to another so as to take a decision to file the instant appeal and other interlocutory application before this Hon'ble Court.

7. The deponent submits that the petitioner/applicant is also utterly failed to explained the days delays not even giving the dates in what way the concerned file was move from one table to another even to their counsel requesting for filing of appeal, it is also not mentioned anywhere in the petition that when their counsel forwarded the related petitions to the applicant for their verification and signature and when such application are send back to their counsel for taking necessary steps. As apparent

from the statements made in the interlocutory petition praying for condonation of delay the petitioner applicant is trying to giving a vague explanation and there by trying to gate ride on the period of limitation which is liable to be dismissed with cost for causing loss of valuable time of the Hon'ble court. The petitioner applicant caused the delay due to their inaction and lethargy when the petitioner know that to file appeal or any application against the Judgment and decree passed by the Learned District Judge, Mon to be filed within the period of limitation as prescribed by the law. As such, praying delay for condonation of 350 days only is liable to be dismissed with cost.

8. The petitioner applicant has made the following statements as explanation for condonation of delay.

(a) In Para-4 alleged that a Civil Revision petition was filed before this Hon'ble court which was withdrawn on 13.12.19 without mentioning the date of filing.

(b) In Para-5 it is also not mentioned that when the impugned Judgment and order was forwarded to the applicant by their counsel.

(c) In Para-6 without mentioning any dates in what way the concerned file was moved from one table to another.

(d) In Para-7 alleged that and interlocutory application No. 167/2019 was filed along with Civil Revision without mentioning any date when the petition was filed and withdrawn i.e., to say only reproduction of the statements made in Para-4 which cannot be considered as any explanation for condonation of delay.

(e) In Para-8 alleged that delay caused due to the process of transferring of file from one office to another and pursuing the case in the wrong forum which is not a good explanation for condonation of delay.

(f) In Para-9 alleged that time taken for vetting of application and there after send the draft petition for preparation of final first appeal and another interlocutory application without mentioning any dates.

(g) The statements made in Para-10,11,12,13,14,15,16 & 17 of the petition are the futile exercise of the petitioner applicant to get ride on the period of limitation. The deponent submits that Length of delay does not matter for condonation of delay whereas; proper explanation of day to day delay is to be given in the petition. While condoning the delay merit of the case supposed to be not looked into by the Hon'ble court. Whereas, the applicant petitioner by giving proper explanation of delay ought to have satisfy the Hon'ble court. The petitioner herein is totally failed to explain the cause of delay as required by law and as such, the petition filed for condonation of delay is liable to be dismissed with compensatory costs."

This Court, after hearing the parties is satisfied that the applicant has been able to satisfactorily explain the delay and therefore in the interest of justice the delay of 411 days is condoned.

The application is allowed.

Sd/-
JUDGE

Comparing Assistant