

NON-REPORTABLE

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC (RSA) No.4 of 2023 with
MC (RSA) No.19 of 2023 with
MC (RSA) No.20 of 2023

1. Lisham Anilkumar Singh, aged about 59 years, s/o (L) L.Kullachandra Singh, R/O Wangkhei Thambalkhong, Lisham Leirak, PO & PS Porompat, Imphal East District, Manipur.

2. Lisham (O) Shanti Devi, aged about 48 Years, w/o L.Binoy Singh, R/O Wangkhei Thambalkhong, Lisham Leirak, PO & PS Porompat, Imphal East District, Manipur.

3. Lisham Subhashini Devi, about 54 years, d/o (L) L.Kullachandra Singh, R/O Wangkhei Thambalkhong, Lisham Leirak, PO & PS Porompat, Imphal East District, Manipur.

4. Lisham Lalit Singh, aged about 71 years, s/o (L) L.Angou Singh, R/O Wangkhei Thambalkhong, Lisham Leirak, PO & PS Porompat, Imphal East District, Manipur.

... Applicants

-Versus-

Kangjam Jayanta Singh, aged about 49 years, s/o (L) K.Joykumar Singh, R/O Wangkhei Thambalkhong, Lisha Leirak, PO & PS Porompat, Imphal East District, Manipur.

... Respondent

**BEFORE
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA**

For the applicants :: Mr.Haobam Prabir Kumar, Advocate
For the respondent :: Mr.M.Rarry, Advocate
Date of hearing :: 14.5.2024
Date of order :: 02.09.2024

ORDER (CAV)

MC (RSA) No.4 of 2023

[1] By the instant application, the applicants are praying for condonation of 195 days (actually, 205 days) delay in filing the accompanying Regular Second Appeal (RSA for short).

[2] Heard Mr. H. Pabirkumar, learned counsel for the applicants and Mr. M. Rarry, learned counsel for the respondent.

[3] Brief facts leading to filing the application for condonation is as follows:

[4] The Regular Second Appeal (RSA for short) has been filed by the present applicants before this Court for quashing/setting aside the impugned judgment and decree dated 21.04.2022, of the Court of District Judge, Imphal East passed in Regular Appeal No.11 of 2020.

[5] It is stated that there has been a delay of 195 days in preferring the RSA and the present application is being filed explaining the delay. That the learned District Judge, Imphal East Manipur heard the RFS No.11 of 2020 without hearing the counsel for the applicants and reserved for judgment on 18.04.2022. On 21.04.2022 the learned District Judge, Imphal East, Manipur passed order in the RFA No.11 of 2020 without giving any information to the counsel for the applicants. Only on 25.4.2022 the applicants came to know about the existence of the order dated 21.04.2022 and the

applicants applied for certified copy of the order in RFA No.11 of 2020 on 5.5.2022. Certified copy of the judgment and order dated 21.04.2022 was obtained on 7.5.2022.

[6] Further, it is stated that the earlier counsel for the applicants, being one of the contesting candidates in the All Manipur Bar Association election held on 28.5.2022, could not appear before the Court and Ms. Nongthombam Elizabeth, Panel Lawyer, was appointed as Legal Aid Counsel on request of the applicants to the High Court Legal Services Committee. Thereafter, on withdrawal of the case from the High Court Legal Services Committee, the applicants again approached their earlier counsel for doing the needful. Due to inability on the part of the earlier counsel, case record/file was taken out from his custody and the applicants being not able to find an Advocate of their choice, there was further delay.

[7] In the second week of January, 2023, Mr. Sapam Biswajit Meitei, Advocate was engaged and preferred the RSA on 13.02.2023.

[8] It is prayed that if the delay is not condoned irreparable loss and legal injury will be caused to the applicants/appellants.

[9] In the written objection to the present application for condonation, it is stated that the applicants have not furnished a copy of the unnumbered RSA said to be filed along with the condonation application and as such, the applicants cannot now be permitted to serve a copy of the RSA after the preliminary objection as it would amount to taking away a valuable right which has risen in favour of the respondent and also for the reason that the respondent has already disclosed the defense to the application based only upon the allegations and averments made by the applicants in the condonation application.

[10] On rejoinder to the objection, it is stated that the applicants applied for certified copy of the RFA No.11 of 2020 on

5.5.2022 and the same is stated at para 3 at page no.5 of the misc application. However, at page No.8 of the misc application while calculating the number of days delay, the date of applying certified copy was mistakenly mentioned as 25.4.2022 instead of 5.5.2022. Subsequently the number of days delay to be condoned was mentioned in the misc application because of the typographical mistake as 195 days instead of the correct number 205 days. The same is due to the oversight and inadvertently written and it doesn't have much difference to the prayer for condonation.

[11] Mr. M. Rarry, learned counsel for the respondents submits that the applicants have not been able to disclose the sufficient reasons for not filing the second appeal within the stipulated time. Even though the application for condonation of delay has to be dealt with sympathetic approach from the court, the applicants have to show their bonafide behaviour for failure to act promptly. Learned counsel mentions three essential conditions for condonation of delay, ie, (i) negligence on part of the applicant, (ii) inaction, and (iii) lack of bonafide. It is submitted that in the present case, the applicants are negligent in not preferring the second appeal with promptness and have been in dormant through out and any instance of bonafide on their part has not been disclosed in the application. It is pointed out a miscellaneous appeal against the order of the executing court was filed within 4/5 days by the same advocate who could not file the appeal for 205 days. Hence, the plea of the applicants that their earlier counsel could not file the appeal within time as he was busy in the election of bar association, is not bonafide and is an after-thought to attract sympathy from this court. In the whole application, there is nothing substantive except for blaming appellate court and the previous counsel.

[12] Mr. M. Rarry, learned counsel for the respondent refers to the following decisions in support of his submissions.

(i) **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy: (2013) 12 SCC 649-**

Delay was not condoned due to conspicuous absence of necessary facts.

(ii) **Shri Gainaichung Malangmei v. State of Manipur: Order dated 04.04.2022 in MC(WA) No. 70 of 2022 of Manipur High Court-**

Change of counsel to change stand and lack of education are not grounds to condone gross delay of 893 days.

(iii) **G. Ramegowda v. Special Land Officer, Bangalore: (1988) 2 SCC 142** - In case of gross

negligence on the part of the party and counsel, time barred appeal should not be entertained.

(iv) **Union of India v. N. Murugesan: (2022) 2 SCC 25-**

The conduct of the part is the most important while considering the application for condonation of delay.

[13] Mr. M. Rarry, learned counsel for the respondent reiterates that the applicants have failed to show bonafide and any sufficient cause for not enabling the prefer the appeal within stipulated time except for blaming previous counsel and prays that the application for condonation of delay be rejected with heavy cost.

[14] Per contra, Mr. H. Prabirkumar, learned counsel for the applicants/appellants submits that the accompanying appeal could not be filed within the stipulated time due to the cogent reasons explained in the application for condonation of delay. The delay of 205 days in preferring the second has been caused to the same reasons as explained in the application. It is stated that the first appeal was heard in absence of the counsel for the applicants and they came to know about the impugned order dated 21.04.2022 in RFA No. 11 of 2020 only on 25.04.2022 and obtained certified copy on 07.05.2022. As Mr. N. Angouthoiba Meitei, the counsel for the

applicants before the trial court as well as first appellate court, advised them to approach High Court Legal Services Committee for filing appeal as they were unable to pay litigation fees. Vide Notification dated 21.05.2022, High Court Legal Services Committee appointed Smt. N. Elizabeth, Panel Lawyer as legal aid counsel for the applicants for filing the second appeal. Since the appeal was not filed in time, vide letter dated 13.10.2022 of the Secretary, High Court Legal Services Committee, the applicants were informed about the withdrawal of the legal aid given to them on their request to engage a private counsel. The applicants again approached Mr. Angouthoiba who took some time in preparing appeal, but returned the file as he was busy in contesting bar election. Thereafter, the present counsel was engaged in the second week of January, 2023 and the second appeal along with the application for condonation of delay was promptly filed on 13.02.2023. Learned counsel submits that in the process, a total of 205 days of delay has been caused which is non-deliberate, non-intentional and due to the reasons explained in the application. The applicants have also filed an affidavit dated 21.08.2023 sworn by their earlier counsel for the delay on his part in the rejoinder affidavit. It is clarified that due to oversight, the number of delay is wrongly mentioned as 195 days in place of 205 days and this ought not to affect in consideration for condonation.

[15] Mr. H. Prabirkumar, learned counsel for the applicants refers the following case laws:

- (i) **N. Balakrishnan v. M. Krishnamurthy: (1998) 7 SCC 123** – Condonation of delay is a matter of discretion of the court and there is no presumption of deliberateness. The primary function of the court is to adjudicate the dispute between parties to advance substantive justice. Delay should not be used to transform a bad cause into a good cause.

(ii) **Ram Nath Sao v. Gobardhan Sao: (2002) 3 SCC 195**- The expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when no negligence or want of bonafide or inaction is imputable.

(iii) **Indian Oil Corporation Ltd. v. Subrata Borah Chowlek: (2010) 14 SCC 419**- Liberal approach has to be adopted when no negligence can be imputed. While considering the application for condonation of delay, the courts have to strike a balance between resultant effect of the order upon the parties either way.

(iv) **Raheem Shah v. Govind Singh: MANU/SC/0829/2023: 2023 INSC 651**- When there was a delay of only 52 days in filing the appeal and furthermore when the parties were litigating with respect to the right over immovable properties, the substantial rights were to be decided between the parties. The delay could be condoned and the appeal could have been decided on merits. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

(v) **Shalini v. Kurushetra University: (2002) 2 SCC 270**

(vi) **LP Shahi College v. Seema Mishra: (2016) 9 SCC 449**

(vii) **Rafiq v. Minshlal: AIR 1981 SC 1400**

Litigants should not be made to suffer for their no fault or fault of their counsel.

[15] Mr. H. Prabirkumar, learned counsel for the applicants sums up that the cogent reasons for not enabling to prefer the second appeal have already been explained in the application. It is pointed out that apart for the earlier conducting counsel, the legal aid counsel

has also taken almost 5 months in preparation of the appeal and the same was never filed. In the circumstances, the present counsel prepared and filed the appeal and applications. It is prayed that the delay of 205 days in filing the accompanying appeal be condoned and the second appeal be heard on merit to do substantive justice.

[16] Mr. M. Rarry, learned counsel for the respondent has pointed out the decisions cited by learned counsel for the applicants are not applicable in the facts of the present case, as they were negligent and put blame on the previous counsel. It is prayed that the application for condonation of delay be dismissed.

[17] This Court has perused the materials on record, the submissions made at bar and decisions referred to by the parties.

[18] It is an admitted fact that there is a delay of 205 days in preferring the second appeal. The reasons cited by the applicants/appellants are – (i) They first approached the High Court Legal Services Committee for legal aid and the same was granted vide Notification dated 21.05.2022 and when the legal aid counsel could not file the appeal, the legal aid was withdrawn on 13.10.2022 thereby adding another 5 months in the delay; (ii) The applicants again approached their earlier counsel who also took some time and returned the file as he was busy in contesting election of the bar association; and (iii) The applicants engaged the present counsel in the second week of January, 2023 and finally appeal along with the application for condonation of delay was filed on 13.02.2023. In the process, a delay of 205 days has been caused.

[19] It is the specific case of the respondent that the applicants are in gross negligent for pursuing the case. On one hand, the same earlier counsel filed misc. appeal against the order of executing court within 4/5 days while he could not file appeal with that speed. It is pointed out that the inability of the earlier counsel to prepare and file appeal due to bar election cannot be sustained.

[20] From the record, it is seen that after getting the certified copy of the impugned judgment on 07.05.2022, the applicants approached for legal aid and a legal aid counsel was appointed on 21.05.2022 and after withdrawal of the legal aid on 13.10.2022, the earlier counsel took some more time and later on returned the file. These facts have been mentioned in the affidavit filed by the earlier counsel. The respondent has not disputed the veracity of the affidavit.

[21] Admittedly, in the present case, the parties are litigating over immovable property. Even though the applicants have not been able to disclose the day-to-day delay, however they are able to show the circumstances under which the delay has been caused. It may be important to keep in mind that it is duty and obligation of the courts to decide the dispute on merit, unless the delay is so gross and without any plausible explanation. In the case in hand, the applicants have explained the circumstances for the delay and the respondent will not suffer irreparable loss, if the delay is condoned and the appeal is decided on merit.

[22] Taking view of all the circumstances and in the interest of justice, the delay of 205 days in filing the accompanying second appeal is condoned subject to the payment of Rs.5000/- as cost to the respondent. Registry is directed to number the second appeal if the same is in order and list the same in due course on submission of proof of payment of cost to the respondent. The application is disposed of in terms of the above directions.

JUDGE

FR/NFR

Priyojit