

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

C.R.P. NO. 5 OF 2015

1. Shri Ahongsangbam Bheigashing Singh 68 years son of (late) A. Tomba Singh now died by his LR's.
 - i. Smt. Ahongsangbam Ongbi Sobita Devi aged about 72 years, W/O (L) Ahongsanbam Bheigashing Singh.
 - ii. Smt. Ahongsangbam Ningol Laishram ongbi Victoria Devi, aged about 35 years W/O Shri L. Rabi (in addition to the Petitioner Nos. 2 to 6).
 2. Shri Ahongsangbam Khelendro Singh 38 years, son of A. Bheigyaching Singh.
 3. Shri Ahongsangbam Norendro Singh 35 years, son of A. Bheigyaching Singh.
 4. Shri Ahongsangbam Biasheshwar Singh, 33 years, son of A. Bheigyaching Singh.
 5. Shri Ahongsangbam Anand Singh, 30 years, son of A. Bheigyaching Singh.
- All are residents of Heirok Part – III, Lam Mari Phangba Leirak, P.O Wangjing, P.S. Heirok, District, Thoubal, Manipur.

.... Petitioners

- Versus -

1. Shri Leitanthem Senapati Singh aged 61 years, son of (L) L. Mani Singh of Heirok Part – III, Lam Mari Phangba Leirak, P.O. Wangjing, P.S. Heirok, District Thoubal, Manipur.

.... Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner	:	Mr. T. Rajendra, Sr. Advocate
For the respondents	:	K. Pradeep, Advocate
Date of hearing	:	22.02.2024
Date of order	:	04.04.2024

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. T. Rajendra, learned senior counsel appearing for the petitioner.

[2] The present Civil Revision Petition has been filed by the petitioner u/s 115 of the Civil Procedure against the order dated 20.08.2015 of the Ld. Civil Judge, Junior Division, Thoubal passed in Judl. Misc. Case No. 53 of 2015 arising out of Original Suit No. 16 of 2014 praying for passing an interim order for staying the further proceeding of Judl. Misc. Case No. 54 of 2015 pending before the Ld. Civil. Judge, Junior Division, Thoubal during the pendency of the present revision petition and to set aside the impugned order dated 20.08.2015.

[3] The respondent as plaintiff instituted Original Suit No. 9 of 2011/16 of 2014 against the petitioners as defendants before the Ld. Civil. Judge, Junior Division, Thoubal praying for the reliefs sought for in the plaint and the petitioners as defendants contested the suit by filling their joint written statement.

[4] After repeated adjournments and failure on the part of the plaintiff to appear before the Ld. Civil Judge, Junior Division, Thoubal, the Ld. Civil Judge Junior Division, Thoubal finally dismissed the Original Suit No. 9 of 2011/16 of 2014 on default due to non-appearance of the plaintiff on 13.11.2014. After dismissal of the suit a demarcation was conducted by the Sub-Deputy Collector, Heirol and its staff in presence of the police and the parties and proper demarcating line between the lands of the petitioners and respondent was properly indentified vide proceedings dated 28.1.2015 of the SDC, Heirol in Demarcation Case No. 24/SDC/(HRK) dated 30.12.2014. After the said demarcation, the petitioners have also constructed proper pucca fencing in the boundary line between their lands and the lands of the respondent

and also their dwelling house in their land wherein they are also now living. In the said demarcation proceedings one L. Shanta Singh who is the son of the respondent signed representing the respondent in the said proceedings.

For conveniences sake section 115 CPC is extracted herein below:

"115. Revision.-[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]".

[5] The respondent/plaintiff then instituted Judl. Misc. Case No. 8 of 2015/10 of 2015 of the Ld. Civil Judge, Junior Division, Thoubal on 12.02.2015 praying for restoring the suit by setting aside the dismissal order dated 13.11.2014. The main ground raised by the respondent in his Judl. Misc. Case No. 8 of 2015/10 of 2015 is that he was out of station from 10.11.2014 to 26.12.2014 for the timber season to cut woods and he instructed his son to contact the conducting counsel and his son failed to appear on 13.11.2014 and

their counsel could not appear as he had gone to Deputy Commissioner, Thoubal in connection with the revenue case and when the counsel arrived at the Court at 1:28 P.M. he found that the case was dismissed at 12:55 A.M. On 07.05.2015, the petitioners filed their written objection to the said Judl. Misc. Case by denying the allegations of the respondent and also stating the facts of the Demarcation proceedings conducted on 28.1.2015 and also the constructions of pucca fencing. The petitioners also submitted in their written objection that the said Judl. Misc. Case No. 10 of 2015 is barred by limitation. After hearing the parties, the Ld. Civil Judge, Junior Division, Thoubal passed order dated 8.05.2015, dismissing the same as barred by limitation. No further appeal or revision has been preferred against the order dated 08.05.2015 meaning that the same has attained its finality.

The last operative portion of the order dated 08.05.2015 passed in Judl. Misc. Case No. 10 of 2015 is extracted herein below:

"Perused the application and materials on record. Heard both Counsels. As per record, the present suit being O.S. No.16 of 2014 was dismissed on default on 13.11.2014. As per para No.2 of the application, the Plaintiff's Counsel arrived at the Court on the said date of dismissal at 1:28 pm. only to find that the case had been dismissed at 12:55 am. In other words, the plaintiff's Counsel became aware of the dismissal Order dated 13.11.2014 on the day itself. However, apparently the present restoration application has been filed on 12.02.2015. As per Article 122 of the Indian Limitation Act, 1963, the period of limitation to restore a suit dismissed for default of appearance is thirty (30) days and the limitation commences from the date of dismissal. Apparently the present restoration application has been filed after the lapse of limitation period of 30 days. No reason is found disclosed in the restoration application explaining the delay in filing the said restoration application. In such circumstance, the present application is dismissed as being barred by Limitation."

On perusal of the above operative portion of the order of the learned Civil Judge (Jr. Divn.), Thoubal, it is ascertained that the

learned counsel as well as the respondent/plaintiff have knowledge about the dismissal order and inspite of knowing the date of dismissal order, the respondent/plaintiff filed the restoration application without condonation of delay application which is mandatory as per article 122 of the Indian Limitation Act, 1963.

It is also seen that the present petitioners/defendants in their written objection mentioned about the bar of limitation in filling the restoration application.

[6] The respondent/plaintiff further filed an application being Judl. Misc. Case No. 53 of 2015 for condoning the delay of 165 days in filing the connected restoration case which has been registered as Judl. Misc. Case No. 54 of 2015. The grounds given in the said Judl. Misc. No. 53 of 2015 is that he was out of station from 10th November, 2014 to 26th December, 2014 and he underwent treatment for Acute Pulmonary Infection and Urinary Calculi Stones and later operated upon at the Community Health Centre, Heirok and as advised by Dr. Y. Nokul Singh in charge CHC Heirok for bed rest from 28.12.2014 to 12.01.2015. Such fact was never mentioned in the Judl. Misc. Case No. 10 of 2015 which was filed earlier on 12.02.2015 even though such facts are there prior to such alleged facts. The petitioners/defendants filed written statement to the Judl. Misc. Case No. 53 of 2015 by clearly stating that the documents so enclosed by the respondent/plaintiff are fabricated and manufactured document as on the very day i.e. 28.12.2014 on which day the respondent/plaintiff was alleged to have been treated by Dr. Y. Nokul Singh, the doctor himself was not present at the hospital and further the said day was also a Sunday. Further, the Community Health Centre, Heirok has no facilities for doing operation and therefore the said allegations of having operation at Community Health Centre, Heirok is absolutely false.

The respondent/plaintiff instead of filling appeal or revision against the dismissal order of restoration petition which was dismissed on the ground of barred by limitation filed another restoration petition being Judl. Misc. Case No. 53 of 2015 for condoning the delay of 165 days in filling the connected restoration petition being Judl. Misc. Case No. 54 of 2015.

On perusal of both the Judl. Misc Cases as mentioned above it was found that the grounds taken by the plaintiff/respondent are not matching with each other, this fact is also mentioned in the written statement filled by the petitioners/defendants and the same was filled with the connected documents.

[7] Learned counsel for the petitioners/defendants further submits that the Ld. Civil Judge, Junior Division, Thoubal after hearing the parties however came to an erroneous conclusion and disposed of the Judl. Misc. Case No. 53 of 2015 by allowing the same. After disposal of Judl. Misc. Case No. 53 of 2015, the application for restoration of Original Suit No. 9 of 2011/10 of 2014 being Judl. Misc. Case No. 54 of 2015 was taken up and the same was fixed on 18.09.2015.

The learned Civil Judge (Jr. Divn.), Thoubal on her part by relying upon the para 3 of the Hon'ble Supreme Judgment in Collector, Land Acquisition, Anantnag and anr V. Mst. Katiji and Ors. (1987) 2 SCC 107 allowed the said condonation application filed by the plaintiff/respondent and the operative portion of the order dated 20.08.2015 is extracted herein below:

"3. The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of the CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period) of the Indian Limitation Act of

1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts.....And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decide on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

....."

5. Keeping in view the above position of law and applying the same in the facts and circumstances of the case, I am of the considered opinion that the cause shown by the applicant for condonation of the delay in filing the said restoration application is sufficient cause. Accordingly, the present application for condonation of the delay is hereby allowed so as to advance the cause of justice. However, this condonation is subject to the payment of Rs.500/- by the applicant to the OP as costs for the delay. This application stands disposed of".

It is indeed settled principal of law that sufficient caused as prescribed in section 5 of Indian Limitation Act must be liberally

construed so as to advance the cause. It is also settled principal of law that to do substantial justice to the parties, Court must disposed of the matters/cases on merit. However, in the instant case the present petitioners/defendants asserted their objection by relying upon the documentary evidences. But, on perusal of the order of the learned Civil Judge, (Jr. Divn.), Thoubal, the learned court failed to discuss the reliability or otherwise of the assertion made by the petitioners/defendants to the documents filed by the respondent/plaintiff. This fact is seriously asserted by the petitioners/defendants by stating in the written statement that the documents so enclosed by the respondent/plaintiff are fabricated and on the very day i.e. 28.12.2014 on which day the respondent/plaintiff was alleged to have been treated by Dr. Y. Nokul was manufactured document as the doctor himself was not present at the hospital and also the said day was a Sunday. Furthermore, it was asserted that the Community Health Centre, Heirok has no facility for doing operation. In the circumstances, it appears and evident that the learned Civil Judge, (Jr. Divn.), Thoubal have acted in the exercise of its jurisdiction illegally or with material irregularity.

[8] Being deeply aggrieved, the petitioners/defendants filed the present Revision Petition for quashing the impugned order dated 20.08.2015 on the following grounds:-

(i) That, the Ld. Civil Judge, Junior Division, Thoubal passed the impugned order dated 20.08.2015 by committing material irregularities and illegalities and also by not properly appreciating the case of the petitioners. In short, the impugned order dated 20.08.2015 is passed without relying on the available records.

(ii) That, a prayer for condonation of delay is not a mere formality and should be supported by valid and tangible grounds. However, the respondents while filing Judl. Misc. Case No. 10 of

2015 on 12.02.2015 did not even made a whisper of the said statements made in Judl. Misc. Case No. 53 of 2015 although such alleged facts of treatment are well before the filing of Judl. Misc. Case No. 10 of 2015. It prima facie shows that the said claims of the respondents made in Judl. Misc. Case No. 53 of 2015 are not correct but are manufactured ones.

(iii) That, the attendance Register filed in the written objection of the petitioners in Judl. Misc. Case No. 53 of 2015, it clearly shows that the said Dr. Y. Nokul Singh was never present on 20.08.2014 till 12.01.2015 except on 1st and 2nd January, 2015. Therefore, the said alleged claim of the respondent is nothing but a false statement to misguide the Court.

(iv) That, the Community Health Centre, Heirok has no facility for doing operation for removing stones. Therefore, the allegation of having operation at Community Health Centre, Heirok is totally false. The Medical Certificate enclosed in Judl. Misc. Case No. 53 of 2015 are also fabricated as the doctor himself was not available on 28.12.2014 and the other dates. The impugned order dated 20.08.2015 therefore is bad in law being passed against the record.

(v) That, the Ld. Civil Judge, Junior Division, Thoubal was of the wrong view that even though liberal approach should be adopted in condoning delay, it should not be to that extent of filing application by committing fraud and also by manufacturing and fabricating documents. A prayer for condonation of delay should not always be taken as a mere formality.

(vi) That, for making a prayer condoning for delay, the party should come with clean hands and by disclosing all the facts which does not enable him to approach the Hon'ble Court within time. The respondent never filed the condonation application being Judl. Misc. Case No. 53 of 2015 and the connected restoration application being Judl. Misc. Case No. 54 of 2015 respectively with clean hands.

(vii) That, the Ld. Civil Judge, Junior Division, Thoubal has already passed order dated 08.05.2015 for dismissing the restoration application being Judl. Misc. Case No. 10 of 2015 dismissing the same as barred by limitation. Therefore, the said matter has been raised, heard and has been finally decided. Therefore, the subsequent Judl. Misc. Case No. 53 of 2015 is barred by the principle of res-judicata.

(viii) That, the Ld. Civil Judge, Junior Division, Thoubal by order dated 08.05.2015 has already held that the prayer for restoration of the suit of the respondent is barred by limitation. The said order dated 08.05.2015 is not taken in appeal or revision before the High Court. Therefore, the same has attained its finality. In such circumstances, the subsequent Judl. Misc. Case NO. 53 of 2015 and Judl. Misc. Case No. 54 of 2015 respectively are not maintainable.

(ix) That, the Ld. Civil Judge, Junior Division, Thoubal passed the impugned order dated 20.05.2015 by causing miscarriage of justice to the petitioners.

(x) That, the Judl. Misc. Case No. 53 of 2015 and Judl. Misc. Case No. 54 of 2015 are in the abuse of the process of the Court and the same ought to have been dismissed in limine.

(xi) That, there are other sufficient grounds for allowing the present revision petition by setting aside the impugned order dated 20.08.2015 and the same shall be submitted at the time of hearing.

[9] The petitioners/defendants also in support of their case cited the following Hon'ble Supreme Court Judgment:

1. AIR 1994 SC 853 (Para 7 & 8)

Fraud by litigants. Guilty Person is liable to be thrown out at any stage. One who come to court must come with clean hand.

2. AIR 1991 SC 1726 (Para 2)

A Litigant seeking a discretionary relief must come with frank and full disclosure of facts. If he fails to do so and

suppress material facts, his application is liable to be dismissed.

3. (2013)9 SCC 92 (Paras 10,12,14,24,27 and 28)

Condonation application for filing SLP before supreme court. Deliberate concealment of material facts and misleading statement made. Application likely to be rejected.

4. (2013)14 SCC 81 (Paras 2D,8,9,12,15 and 16)

Sufficient cause cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party. Even though limitation may harshly affect the rights of the parties, but it has to be applied with all his reason when prescribed by statutes. The law is harsh but it is the law.

The Honble Supreme Court in (2010) 8 Supreme Court Cases 685: [Balwant Singh (Dead) vs Jagdish Singh & Ors] whilst refusing to condone the delay of 778 days observed that;

"It was observed that though sufficient cause should be construed in a liberal manner, the same could not be equated with doing injustice to the other party. For sufficient cause to receive liberal treatment, the same must fall within reasonable time and through proper conduct of the concerned party. The Court emphasised that for such an application for condonation to be seen in positive light, the same should be bona fide, based on true and plausible explanations, and should reflect the normal conduct of a common prudent person. Further, the explained delay should be clearly understood in contradistinction to inordinate unexplained delay to warrant a condonation."

In the instant case, the observation made above by the Hon'ble Supreme Court is applicable in the facts and circumstances as narrated above.

[10] When the matter was taken up on 08.12.2023, Mr K. Pradeep, learned counsel appearing on behalf of the respondent submitted that the original suit pending before the subordinate court was already disposed of, as such, he needs instruction from his client/respondent whether he is interested in pursuing the case pending before the Hon'ble High Court or not, since the matter is pending from 2015 onwards. However, the learned counsel appearing on behalf of the respondent failed to appear before the Court from that day onwards.

[11] On perusal of records, it is seen that the respondent failed to turn up before this Court on several occasion as such the present order is passed basing on the available facts and circumstances of the case and relying on the observations made by the Hon'ble Supreme Court.

It is evident and clear that the parties as well as the learned counsel for the respondent have knowledge of the date fixed and also have knowledge of the order of dismissal of the case.

It is also evident that the learned Civil Judge, (Jr. Divn.), Thoubal inspite of the petitioners' serious allegation of misrepresentation of facts by the respondent regarding his illness and subsequent operation conducted on him and the documents filed in this regard as fabricated, allowed the condonation of delay filed by the respondent without considering the allegation made thereof and the documents filed, thereby committing in the exercise of its jurisdiction illegally or with material irregularities.

[12] In the facts and circumstances and in the light of the discussion made above and for the reasons given therein, reluctantly, this Civil Revision Petition is allowed. The impugned order dated 20.08.2015 passed in Judl. Misc. Case No. 53 of 2015

passed by the learned Civil Judge, (Jr. Divn.), Thoubal is set aside. The learned Civil Judge, (Jr. Divn.), Thoubal is directed to take fresh consideration of the case basing on the facts and circumstances and the documents filed by the parties.

Accordingly with the above observation and direction this Civil Revision Petition is disposed of parties are to bare their own cost.

Send the case record to the Court of Civil Judge, (Jr. Divn.), Thoubal for fresh consideration of the case basing on the fact and circumstances and the documents filed by the parties.

JUDGE

FR/NFR

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