

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.57 of 2023

Subrata Bardhan

..... Petitioner(s);

Versus

Debabrata Bardhan

.....Respondent(s)

For Petitioner(s) : Mr. Kundan Pandey, Advocate.

For Respondent(s) : Mr. N. Chowdhury, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/01/2024

Heard Mr. Kundan Pandey, learned counsel for the petitioner and Mr. N. Chowdhury, learned counsel for the respondent.

2. It is the case of the petitioner that the T.S. (Partition) 84/2003 instituted by the plaintiff/respondent herein was decreed on 09.10.2007. It is his further case that the decree got confirmed by the First Appellate Court and also the Second Appellate Court. Petitioner contends that after 14 years of the passing of the judgment and decree which attained finality, the final decree was set aside by the learned Trial Court vide order dated 07.05.2022 at the instance of the plaintiff/respondent herein, only on the ground that the Survey Commissioner was not appointed and the preliminary decree was made final. He submits that the Survey Commissioner was appointed. However, the defendant/petitioner herein preferred a review petition before the learned Trial Court against the order dated 07.05.2022 which was rejected on the ground that it was suffering from 29 days delay and the day to day explanation has not been furnished. Therefore, the petitioner has approached this Court.

3. Mr. Kundan Pandey, learned counsel for the petitioner, submits that the delay has been properly explained and it is not fatal to the entertainment of the review petition. The learned Trial Court seems to have taken a narrow approach to the matter and refused to condone the delay of 22 days as per the petitioner, but 29 days as per the Court. Therefore, the impugned order may be set aside and the review petition may be revived.

4. Mr. N. Chowdhury, learned counsel for the respondent, has objected to the prayer stating that the day to day delay has not been explained properly while preferring the review petition. He has also sought to address the Court on the merits of the review petition, which this Court is not required to enter into.

5. Considered the submission of learned counsel for the parties. The relevant background facts noted above needs no repetition.

Petitioner is aggrieved by rejection of the petition under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 22 days as per the petitioner, and 29 days as per the Court in preferring a review application against the order dated 07.05.2022 by which the learned Trial Court had set aside the final decree passed in T.S. (Partition) 84/2003. The period for filing a review petition is 30 days and as such, it ought to have been filed by 30 days from the date of the impugned order i.e. 07.05.2022. Petitioner has sought to explain the delay on the ground that he was seriously busy with the treatment of his father who was admitted at Tripura Medical College, Hapania, Agartala for 15 days, and since then till the filing of the case, he was undergoing treatment. Due to the said reason, the learned counsel for the petitioner failed to contact

him and could not inform about the order dated 07.05.2022. Admittedly, on 28.05.2022, the petitioner came to know about the same from his learned counsel and requested him to obtain the certified copy of the order. On the same day, the petitioner submitted an application before the High Court of Tripura for obtaining certified copy of the order dated 04.06.2013 passed in SAO 03/2013 and on 04.06.2022, he also submitted another application before the Trial Court for obtaining certified copy of the order dated 07.05.2022 passed in Civil Misc.(J) 01/2021. The certified copy was ready for delivery on 09.06.2022, which was received on 10.06.2022. The learned counsel for the petitioner was thereafter out of India between 12.06.2022 and 18.06.2022. Petitioner visited his chamber after his return and he was informed that there are good grounds for preferring a review petition. Thereafter, the learned counsel took six days' time for preparation of the review application and the condonation application which was filed on 05.07.2022. It is submitted that the delay has been properly explained, but the learned Trial Court has rejected the application for condonation of delay without taking into consideration that the delay was not inordinate and had also been properly explained.

6. Upon consideration of rival submission of the parties and upon going through the relevant materials placed on record and on perusal of the impugned order, it appears that the learned Trial Court has rejected the prayer for condonation of delay without appreciating that the delay was neither inordinate nor unexplained. Reference is made to the judgment rendered by the Apex Court in the case of **Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others** reported in (1987) 2 SCC 107. The opinion of the Apex Court is extracted hereunder :

“The legislature has conferred the power to condone delay by enacting Section 5 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. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. 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 decided 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.”

Learned counsel for the petitioner has also placed reliance upon a recent judgment of the Apex Court rendered in the case of ***Raheem Shah and Another v. Govind Singh and Others*** reported in **2023 SCC Online SC 910** where the ratio rendered in the case of ***Mst. Katiji*** (supra) has also been relied upon in matters of condonation of delay under Section 5 of the Indian Limitation Act, 1963 in order to do substantial justice to the parties.

7. In the facts of the present case, the explanation furnished by the petitioner does not give an impression that the delay was occasioned deliberately, or on account of culpable negligence, or on account of mala fides. Petitioner could not have stood to benefit by resorting to delay as a final decree

passed in the year of 2007 has been set aside by the order dated 07.05.2022 sought to be reviewed at the behest of the petitioner.

8. As such, this Court is of the considered view that the impugned order cannot stand in the eye of law, and is accordingly set aside. The matter is remitted to the learned Court of Civil Judge (Sr. Div), Court No.2, West Tripura, Agartala for consideration of the main review petition on merits.

9. Interim stay stands vacated. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ



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