

**HIGH COURT OF TRIPURA
AGARTALA**

IA No.02/2023 in MFA(FA) No.01 of 2023

The Tripura State Electricity Corporation Limited & another
..... Applicant/Appellant(s);

Versus

Smt. Prabhabati Sutradhar & another
.....Respondent(s)

For Applicant/Appellant(s) : Mr. N. Majumdar, Advocate.

For Respondent(s) : Mr. Alik Das, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

08/02/2024

Heard Mr. N. Majumdar, learned counsel for the applicants/
appellants-Corporation and Mr. Alik Das, learned counsel for the respondents-
claimants.

2. The appellants-Corporation has laid a challenge to the judgment dated 17.06.2019 rendered by the Court of learned Civil Judge (Sr. Div.), Khowai Tripura in Money Suit No.35/2014 instituted under Section 1A of the Fatal Accidental Act, 1855 by the claimants/respondents herein whereby the learned Court has granted compensation to the tune of Rs.5,00,000/- to be paid by the appellants-Corporation as damages to the plaintiffs with interest @ 8.5% per annum from the date of institution of the suit till realization with interest accrued thereupon, which would be apportioned equally among the plaintiffs, within a period of 3(three) months from the date of the judgment.

3. The judgment was delivered on 17.06.2019. The appeal was preferred on 05.12.2023 after more than four and a half years and even excluding the period of COVID delay in terms of the order passed by the Apex

Court in Suo Motu Writ Petition (C) No.03/2020, the appeal suffers from a delay of 813 days, for condonation of which IA No.02/2023 has been preferred.

4. Mr. N. Majumdar, learned counsel for the appellants, has submitted that the appellants have shown sufficient cause for condonation of delay of 813 days under Section 5 of the Limitation Act, 1963. He has referred to the contents of the interlocutory application specifically paragraphs 6, 7, 8 & 17.

5. A perusal of the averments made in the interlocutory application and more particularly paragraphs 6, 7 & 8 show that the judgment was pronounced on 17.06.2019 and the decree is dated 15.07.2019. The period of limitation for filing appeal is 90 days. It is stated that application for certified copy was made just after pronouncement of judgment, but the requisites folio and court fees could not be made within time and as such, application was rejected. The application for certified copy was made on 07.01.2021 only. The certified copy was ready on 15.01.2021 and received on that date. Thereafter, the department processed the file for obtaining opinion of learned counsel who gave legal opinion for preferring the appeal. But in the meantime, the case file was misplaced during movement of file and could not be found even after rigorous search. For want of necessary documents and papers and for maintaining official procedure, the appeal could not be filed within the stipulated period which has resulted in the delay. It is also stated at para 8 that in the process, the concerned file moved around different tables and the respective officials scrutinized the case records and opinions were obtained for

preferring an appeal. Thereafter the department took the initiative in the matter for doing the needful.

6. Mr. Majumdar, learned counsel for the appellants, submits that the period of delay was consumed in scrutiny, collection of documents and taking decision to prefer an appeal. The appellants took some time to search out the misplaced file. He further submits that the delay is not intentional and has been sufficiently explained. Appellants have a good case on merits. Therefore, the appeal may be heard on merits after condonation of delay.

7. Learned counsel for the appellants relied upon a decision of the Apex Court in the case of *Sandhya Rani Debbarma and others v. National Insurance Company Limited and another* reported in (2016) 16 SCC 206 and submits that the Apex Court had condoned a delay of 2824 days in a case arising under Motor Vehicles Act, 1988 in favour of the victim claimant. Similar in the case of *Ram Sumiran and others v. D.D.C. and others* reported in AIR 1985 SC 606, the Apex Court had condoned the delay of about six years for seeking setting aside of the abatement and substitution of the legal representatives of the deceased respondent in a writ petition under Article 226 of the Constitution of India. Learned counsel for the appellants, therefore, submits that the delay is not inordinate as compared to the magnitude of delay condoned by the Apex Court in the cited cases. Moreover, the appellants have been able to show sufficient cause for condonation of such delay in the interest of justice. Therefore, delay may be condoned and the appeal may be heard on merit.

8. Mr. Alik Das, learned counsel for the respondents, has opposed the prayer. He submits that the delay is inordinate. No sufficient cause has been shown on the part of the appellants-Corporation. In fact, the explanation furnished in the condonation petition shows complete lack of diligence and promptitude in preferring an appeal against the judgment rendered under Fatal Accidents Act, 1855 in a case where the father and husband of the claimants had died due to electrocution. The averments in the application show that even the file was misplaced. The application for obtaining the certified copy got dismissed because of non-filing of requisites. Thereafter, such requisition was made only on 07.01.2021 when the judgment and decree was delivered on 17.06.2019 and 15.07.2019 respectively. Even after, excluding the period of COVID-19 delays, the appeal suffers from a delay of 813 days. Meanwhile the execution case being Ex. (M) No.01/2023 preferred by the decree holders/respondents herein is pending. As such, delay may not be condoned, otherwise it may lead to miscarriage of justice.

9. Having considered the submission of learned counsel for the parties and having gone through the explanation furnished in the delay condonation petition, this Court finds that there has been complete lack of diligence and urgency on the part of the appellants-Corporation in approaching the Appellate Court if at all it was aggrieved by the judgment rendered by the learned Court of Civil Judge (Sr. Div.), Khowai Tripura in Money Suit No.35/2014 in a case under Fatal Accidental Act, 1855 where the bread earner of the claimants, i.e. the father and husband of the claimants had died due to electrocution. The judgment and decree was delivered on 17.06.2019 and 15.07.2019 respectively and the application for obtaining certified copy made

in the year 2019 after the judgment was delivered, was dismissed for non-filing of requisites and court fees. Thereafter, the relevant file got misplaced in the Corporation. The further explanation shows that even after such delay, the file moved in a leisurely manner from one table to another and ultimately when the appeal was filed, it suffered from a delay of 813 days even though the period of COVID-19 has been excluded as per the order of the Apex Court in *Suo Motu Writ Petition (C) No.03/2020*. The explanation furnished, therefore, does not amount to 'sufficient cause' which may be condoned in the interest of justice.

10. The decisions cited on behalf of the appellants are in different factual situations. The Apex Court in the case of *Sandhya Rani Debbarma and others* was persuaded to condone the delay in the appeal preferred by the claimants in respect of claim under Section 166 and 173 of the Motor Vehicles Act, 1988 on the question of computation of just and fair compensation. In the case of *Ram Sumiran and others*, it appears that the delay of six years in seeking setting aside of the abatement of the writ petition was condoned taking note of the fact that the petitioners were persons from rural areas. The applicants/appellants herein does not fall in any of these categories in which a liberal view can be taken in condoning the delay. The appellants are Corporation, manned by a hierarchy of officials who are expected to discharge their duties in a proper and diligent manner while pursuing legal remedies involving the interests of their Corporation. The facts of the present case and the explanation furnished do not satisfy the conscience of this Court to condone the delay.

11. As such, IA No.02/2023 seeking condonation of delay is dismissed. Consequently, the main appeal being MFA (FA) No.01/2023 and IA No.01/2023 seeking staying of the operation of the impugned judgment and decree are also dismissed.

(APARESH KUMAR SINGH), CJ

