

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.05 of 2024

Sri Bishnu Debbarma

..... Petitioner(s).

Versus

Sri Dhiresh Lodh

..... Respondent(s).

For Petitioner(s) : Mr. D.C. Roy, Advocate.

For Respondent(s) : Mr. A. Sengupta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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01/03/2024

Heard Mr. D.C. Roy, learned counsel for the petitioner and Mr. A. Sengupta, learned counsel for the respondent.

[2] By the impugned order dated 08.12.2023 passed in Civil Misc. (Condo) No.46 of 2022, the learned District Judge, West Tripura, Agartala has dismissed the application for condonation of delay of 256 days in filing the restoration petition against the order of dismissal of T.A. No.65 of 2016 dated 20.09.2021 on the ground that despite excluding the period of COVID delays from 15.03. 2020 to 28.02.2022 as per order passed by Apex Court in Suo Moto Writ Petition (C) No.3 of 2020, petitioner has not been able to effectively explain the delay between 01.03.2022 to 10.11.2022. As such, the learned Court did not find any sufficient cause to condone the delay for restoration of the appeal.

[3] It appears from perusal of the documents which are the application under Section 5 of the Limitation Act, 1963 bearing Misc. (condonation) No.46 of 2022 in T.A. No.65 of 2016 placed on record by learned

counsel for the petitioner pursuant to the previous order dated 23.02.2024 that having lost in Title Suit No.35 of 2015 and T.S(CC) No.04 of 2015 passed by the learned Civil Judge, Sr. Div., Court No.1, Agartala, West Tripura, petitioner preferred an appeal under Section 96 of the Civil Procedure Code read with Section 151 thereof before the Court of the learned District Judge, West Tripura, Agartala.

[4] According to the petitioner the last appearance of the appellant/petitioner herein was recorded on 11.12.2020 and whereafter due to the illness of the learned advocate representing him, the case was not properly represented till it was dismissed on 20.09.2021. Petitioner has also alleged that the said counsel was mostly out of the State in connection with his treatment and rehabilitation. He had not informed the appellant regarding non-prosecution of the appeal and leading to dismissal. Petitioner all of a sudden received a show cause notice from the Court of the Civil Judge, Sr. Division, Court No.1, West Tripura Agartala in connection with Execution (T) No.05 of 2022 arising out of T.S. (CC) No.4 of 2015 to appear on 18.07.2022. On approaching his erstwhile counsel who has representing him in appeal, it transpired that he has been out of station in connection with his treatment and rehabilitation for de-addiction. Thereafter, the petitioner met another advocate who advised him to appear in the executing Court and also preferred an appeal before the High Court. Accordingly, a counsel was engaged to represent him before the executing Court. The learned Court had also allowed the petition and fixed the next date. All of a sudden on 04.11.2022 in the evening the petitioner visited the chamber of counsel who found that his appeal was already dismissed on 20.09.2021 due to non prosecution as his appointed counsel did not appear. Petitioner also found that the counsel appointed by him to represent the execution case also did not appear on

15.09.2022 before the learned executing Court. Therefore, the learned executing Court closed the opportunity to submit written statement and fixed the next date on 16.11.2022. Thereafter, a certified copy of the order dated 20.09.2021, whereby his appeal was dismissed, was obtained and another counsel was appointed to prepare the restoration petition along with the application for condonation of delay. Ultimately the restoration application was filed on 11.11.2022. Petitioner had, therefore, been able to show sufficient cause for condonation of the delay. Though ordinarily the delay would be 364 days from the date of dismissal of the appeal due to non prosecution but discounting the period of COVID delays, it comes to 256 days. Learned counsel for the petitioner submits that the learned Court has not appreciated the explanation furnished by the petitioner for restoration of the appeal. If the delay is not condoned, the appeal will not be restored and the appellant/petitioner would suffer irreparably.

[5] The respondent has also filed a reply which has been placed on record by learned counsel for the petitioner along with a delay condonation petition pursuant to the previous order. The respondent took a plea that the explanation furnished by the appellant was not proper. The appellant was not vigilant to proceed with the appeal despite several opportunities. Therefore, the appeal was dismissed for non prosecution. He has made some unfounded allegations against the appointed lawyer when it was his duty to properly pursue his appeal and to appear before the appellate court in every date personally with his appointed advocate. Learned counsel for the respondents submits that the petitioner has therefore not been able to show sufficient cause for condonation of delay.

[6] I have considered the submissions of the learned counsel for the parties and taken note of the materials placed from record. I have also taken note of the explanation furnished by the appellant/petitioner before the learned appellate Court for restoration of the appeal. The appeal preferred by the petitioner against the impugned judgment and decree dated 19.09.2016 was dismissed during the period of COVID on 20.09.2021. Petitioner had engaged a counsel who remained absent on the fateful day. The petitioner has taken a plea that he was not well conversant with the proceedings of a Court of law and therefore had trusted his lawyer who, however, was not able to properly prosecute the appeal since he had gone for his treatment and rehabilitation from de-addiction. Apparently, the petitioner came to know of the dismissal of the appeal only after receiving notice in the execution case. Thereafter, he has enquired about the status of the appeal and preferred the restoration application on 11.11.2022 which occasioned a delay of 256 days even after discounting the period of COVID delays upto 20.02.2022.

[7] It appears from the order dated 10.01.2022 passed in Misc. Application No.21 of 2022 and Misc. Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020 along with other Misc. Applications by the Apex Court that the order dated 23rd March, 2020 was restored in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 & 23.09.2021 and it was directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022. The Apex Court also directed that in cases where the limitation would have expired during the period between 15.03.2020 till

28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event, the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. As such, the period of 90 days from 1st March, 2022 had to be further discounted in calculating the total period of delay in preferring the restoration application.

[8] As such, on consideration of the explanation furnished and the legal position in view of the order passed by the Apex Court in Suo Motu Writ Petition (C) No.3 of 2020, this Court is satisfied that the appellant/petitioner herein had been able to make out sufficient cause for condonation of delay in seeking restoration of the appeal. The learned Court has committed an error in rejecting the application for condonation of delay despite sufficient cause shown by the appellant. Accordingly, this petition is allowed. The delay in seeking restoration of the appeal is condoned. The learned appellate Court would proceed to hear the appeal on merits in a time bound manner. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ