

GAHC040008462023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : CRP/31/2023

Chime Yangsang Pema Kod Welfare Society
Represented by its President Sh. Michung Khamba,
S/o Sh. Temphi Khamba,
Registered Office at Tuting, PO/PS Tuting, Upper Siang District, Arunachal Pradesh.

VERSUS

Eko Dumbing Forest Development Society and Anr.
Represented by its President Sh. Annying Boli,
R/o Simong Village, PO/PS Yingkiong, District Upper Siang, Arunachal Pradesh.
2:Simong and Himong Community Youth Association
Age: 0
Occupation

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : Nikita Danggen

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 19-06-2024

Heard Mr. R. Sonar, learned counsel for the petitioner. I have also heard Ms. N. Danggen, learned counsel for the respondents.

2. By filing this revision petition, the petitioner has assailed the order

dated 24.5.2023 passed by the learned District & Session Judge, Pasighat in PSG IA No.77/2022, whereby prayer for condonation of delay of 26 days in preferring the connected appeal was rejected resulting in dismissing of the appeal.

3. The case of the petitioner is that being aggrieved by the ex-parte Kebang decision dated 26.08.2022 passed by the member of Upper Siang District Gaon Burah Association, the petitioner filed Civil Appeal (Kebang) Case No.105/2022, under section 15(3) of the Arunachal Pradesh Civil Courts Act, 2021 challenging the legality and validity of the said impugned ex-parte Kebang decision. The appeal was filed, amongst others on the ground: that the Upper Siang Gaon Burah Association has no authority and territorial jurisdiction to decide the case; the Judges of the case were an interested party from Simong community who were the members of the disputing party in the case; and the case was unfairly and illegally decided ex-parte in favour of the respondent party.

4. While filing the above civil appeal before the learned District Judge Pasighat, delay of 26 days had arisen. Hence, the petitioner filed IA 77/2022 under section 5 of the Limitation Act, 1963 praying for condonation of delay of 26 days in filing the connected civil appeal.

5. It is submitted that the impugned ex-parte Kebang decision was passed on 26.08.2022. The certified copy of the said ex-parte order was received by the petitioner on 10.09.2022 and the civil appeal along with the condonation petition was filed on 5.11.2022. As such, there was a delay of only 26 days in filing the connected appeal. In the condonation petition, although the reason for delay in not filing the connected appeal within the stipulated period of time has fully been explained in detail and submitted the

relevant documents including the medical treatment documents of the petitioner; however, the said condonation petition has been rejected and dismissed on the ground that day to day delay has not been explained.

6. Be that as it may, at this stage the basic contention raised by the learned counsel for the petitioner in the instant petition is that the Appellate Court i.e. the District & Session Judge Pasighat was not having jurisdiction on the date of passing of the impugned order dated 24.5.2023 by virtue of Arunachal Pradesh Civil Courts Act, 2022 and the learned Court of District & Session Judge ought to have transferred the appeal along with the condonation petition to the learned Civil Judge having jurisdiction to try the case.

7. The learned counsel for the petitioner submits that under proviso to the sub section 3 of section 15 of the Arunachal Pradesh Civil Courts (Amendment) Act, 2022, an appeal from the village shall lie before the Court of Civil Judge Senior Division/Civil Judge Junior Division. The relevant proviso of sub section 3 of section 15 is quoted here below:-

“Provided further that in case the Deputy Commissioners could not dispose of the pending appeal in their Court(s) within one year from the date of commencement of the Arunachal Pradesh Civil Courts Act 2021 (Act No.4 of 2021), they shall transfer such pending appeal cases to the Courts of Civil Judge Junior Division, the Courts of Civil Judge Senior Division, the Courts of Additional District Judge or the Courts of District Judge, as the case may be, as per their territorial and pecuniary jurisdiction.

Provided also that, in case an appeal is transferred by the Deputy Commissioners or preferred against the judgment of Customary Court(s) in the Courts of Civil Judge Junior Division, the Courts of Civil Judge Senior Division, the Courts of Additional District Judge or the Courts of District Judge, as the case may be, such appeal shall not be set aside merely on technical ground or procedural lapses but in the interest of justice, shall be disposed of as may be deemed appropriate or proceed with the case de novo.”

8. The learned counsel for the petitioner submits that the learned Court

of District & Session Judge Pasighat was well aware of the above amended proviso to the provision of sub section 3 of section 15 in as much as in the said impugned order the learned District Judge has made an observation that; “ *The appeal has been preferred in terms of the APCC Act, 2021 and the same has been amended in the month of November’2022, however, the parties have submitted their arguments before this Court.*”

The learned District Judge was aware of the proviso to the amended provisions under the APCC Act, 2022 is also evident from the various orders passed by the said Court on 31.01.2023, 18.02.2023 whereby, the records of Civil Appeal (Kebang) pending before the said Court have been transferred to the learned Civil Judge of the concerned jurisdiction. However, despite of having knowledge of the fact that the District Judge Pasighat was having no jurisdiction to decide the matter, the instant case has not been transferred to the Civil Judge of the concerned jurisdiction, while all other such Civil Appeal cases of the said Court have already been transferred. It is submitted that the learned District Judge, Pasighat ought to have transfer the present Civil Appeal along with the condonation petition to the concerned Civil Judge.

9. In support of his submission, the learned counsel for the petitioner relied on the decision of the Hon’ble Supreme Court in the case of ***Harshad Chiman Lal Mode vs DLF Universal Ltd and Another*** reported in ***(2005) 7 SCC 791***. The relevant paragraphs 30-33 are reproduced here below:-

“30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to

subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

31. In *Halsbury's Laws of England*, (4th edn.), Reissue, Vol. 10; para 317; it is stated;

317. Consent and waiver. Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

32. In *Bahrein Petroleum Co.*, this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a *coram non jndice*.

33. In [*Kiran Singh v. Chaman Paswan*](#), (1955) 1 SCR 117 : AIR 1954 SC 340, this Court declared;

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

10. The learned counsel for the respondent Ms. N. Danggen fairly conceded the submission made by the learned counsel for the petitioner that in view of the amended proviso to the provision of sub section 3 of section 15 of the APCC (Amendment) Act, 2022, the District Judge at Pasighat was

not having jurisdiction at the time of passing of the impugned order dated 24.05.2023 and the learned District & Sessions Judge ought to have transferred the said appeal along with the condonation petition to the learned Civil Judge of the concerned jurisdiction. She further submitted that the matter may be remanded back to the learned District Court with a direction to transfer the case record of the present case to the Court of concerned Civil Judge for decision afresh without making any observation on the merit of the case.

11. Upon hearing the parties and in view of the proviso to sub section 3 of section 15 of the APCC (Amendment) Act, 2022, and the decision of the Hon'ble Supreme Court in the case referred above, and considering that the District & Session Judge was not having jurisdiction on the date of passing the said impugned order by virtue of the APCC Act,2022, the impugned order dated 24.05.2023 passed by the learned District & Session Judge, Pasighat in PSG IA 77/2022 is hereby quashed and set aside.

12. As agreed upon by the parties, the matter is remanded back to the Court of the District Judge Pasighat with a direction to transfer the record of the present case to the concerned Civil Judge (Senior Division)/Civil Judge (Junior Division) having jurisdiction as provided under Arunachal Pradesh Civil Court (Amendment) Act, 2022 for decision of the case in accordance with the provision of law.

13. The Revision Petition is disposed of.

14. Send back the record immediately.

JUDGE