

GAHC040013762022



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

Case No. : IA(C)/221/2022

Bittu Kri and 2 Ors.

S/o Lt. Soli Kri,

Resident of Tezu, PO/PS Tezu, District Lohit, Arunachal Pradesh 792001 2: Sondi Kri

Age:

Occupation :

3: Indrani Kri

Age:

Occupation

VERSUS

Rajen Miuli and Anr.

S/o Lt. Goka Miuli,

Resident of Medical Colony, PO/PS Tezu, District Lohit, Arunachal Pradesh 792001

2: Anita Miuli

Age: 0

Occupation

Advocate for the Petitioner : T T Tara, B. Picha

Advocate for the Respondent : D K Deori

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 07.08.2024

Heard Mr. B. Picha, learned counsel for the applicants and Mr. D. K. Deori,
learned counsel for the opposite parties/ respondents No. 1 and 2.

2. By filing this application under Section 5 of the Limitation Act, 1963, the applicants have prayed for condonation of delay of 3125 days in filing the connected Regular First Appeal(RFA) against the judgment and decree dated 20.01.2014 passed in Title Suit No.19(L)/2013 by the learned District Judge, Lohit District, Tezu, Arunachal Pradesh.

3. The applicants have set out the grounds at paragraph Nos.4, 5, 6, 7 and 8 of the application, which are reproduced hereinbelow:.

"4. That the applicants beg to state that it was in the month of September 2015, the applicants came to know that the respondent No.1 was trying to grab their land by changing the ownership on the strength of impugned Judgment and Order and Decree dated 20.01.2014. Learning the fact, the applicants on 24.09.2015 have submitted a complaint before the Deputy Commissioner, Lohit District, and requested not to process transfer of ownership of immovable properties recorded in the name Lt. Smti. Chuchu Kri @ Suchu Kri @ Chuchu Miuli @ Suchu Miuli. It is an admitted fact that since the applicants are layman to law and its procedure, the applicants inadvertently approached wrong forum, i.e. before the Deputy Commissioner, Lohit District. It is to state that upon filing of the complaint, the applicants got engaged in their usual work. The applicant no.1 went to Delhi for preparation of civil service, and after selection in Arunachal Pradesh Civil Service, he was engaged in his new service life. The applicant No.2 being a Charter Accountant went back to Pune to join his duty, and the applicant No.3 being a married woman went back to Lower Dibang Valley District to join her family life. Pertinently, later without the knowledge of the applicants, the Deputy Commissioner, Lohit District, passed an order dated 23.02.2017 in favor of the respondent No.1. It is state that the applicants were unaware of order dated 23.02.2017, as the same was never intimated to the applicants. The applicants learn about the order dated 23.02.2017 only on February month of 2021. Considerably, being known about the impugned Judgment and Order and Decree dated 20.01.2014 passed in Title Suit No. 19(L)/2013 by the learned District and Session Judge, Tezu, District Lohit, Arunachal Pradesh, the applicants after counseling have immediately

filed Interlocutory Application No. 03(L)/2021-IN- Title Suit No. 19(L)/2013 on 21.02.2021, by stating that the respondent No.1 by committing fraud upon the learned Court below has procured the Judgment and Order and Decree dated 20.01.2014. Thus, a prayer was made to revoke the legal heir certificate given to the respondent No.1.

5. That, subsequently, pursuant to the Interlocutory Application No. 03(L)/2021-IN- Title Suit No. 19(L)/2013 filed by the applicants, the respondent No.1 has also filed his written statement, by mainly taking technical plea.

6. That, thereafter, realizing the fact that the petition has been filed under wrong provision of law, the applicants had prayed the learned Court below to allow to withdraw Interlocutory Application No. 03(L)/2021-IN- Title Suit No. 19(L)/2013, with liberty to file a fresh. Hearing the prayer, the learned Court below vide Order dated 31.03.2022 had allowed the prayer made by the applicants, by granting applicants liberty to file a fresh.

7. That the applicants beg to state that, after withdrawal and in lieu of search for provision of law for challenging the impugned Judgment and Order and Decree dated 20.01.2014, the learned Counsel for the applicants have kept the file till September of 2022. It is thereafter, the applicants have changed their old counsel and engaged new counsel in the month of October, 2022. And from October till filing of instant appeal has been caused for preparation of appeal and to get initials of applicant No.2 and 3 in the Vakalatnama, since applicant No.2 reside in Pune and appellant No.3 reside in Lower Dibang Valley.

8. That the applicants beg to state that initial delay from date of Judgment and Decree dated 20.01.2014 till filing of complaint before Deputy Commissioner, Lohit District, dated 24.09.2015, was caused due to the fact that the applicants were unaware of Judgment and Decree dated 20.01.2014, however, it is during transfer of ownership of immovable properties of their late mother, the applicants came to know about existence of Judgment and Decree dated 20.01.2014. The rest of the delay till filing of instant condonation application has been caused due to approaching to wrong

forum...."

4. Mr. Picha, learned counsel for the applicants, by referring to the grounds taken in the application and also to the documents annexed with the application, submits that the judgment and decree dated 20.01.2014 has been obtained by the opposite parties/respondents by suppressing the material facts and by playing fraud with the Court, inasmuch as, the basis of the impugned judgment and decree dated 20.01.2014 is based on the legal heir certificate pertains to late mother of the applicants and the respondents. That apart, he contends that the applicants after coming to know of the judgment and decree dated 20.01.2014, had *bonafide* pursued wrong remedy before the wrong forum including the Deputy Commissioner and the learned District Judge. The proceeding before the learned District Judge ultimately was withdrawn. Therefore, he submits that there is no deliberate act which has caused delay on the part of the applicants in preferring the connected regular first appeal against the judgment and decree dated 20.01.2014 and as such, the delay of 3125 days in preferring the present appeal may be condoned.

5. Mr. Picha, learned counsel for the applicants has relied on the judgment of the Hon'ble Supreme Court in the case of *Commissioner of Customs Vs. Candid Enterprises*, reported in (2002) 9 SCC 764, wherein the Hon'ble Supreme Court has held that the cardinal principle enshrined in Section 17 of the Limitation Act that fraud nullifies everything and if it is satisfied that there might be some fraud, there is an every reason for condoning the delay and to hear the appeal. In the above case, the Hon'ble Supreme Court after consideration of the case on its merit has allowed the application for condonation of delay and directed the Tribunal to hear the appeal on merits.

6. Mr. Picha, learned counsel has also relied on the judgment and order of

this Court dated 23.01.2019, passed in CRP.478/2015, which is reproduced hereinbelow:-

"7. Considered the submission of the learned counsel. I have perused the impugned order and the copy of the GD Entries annexed to this petition. In the case of S.P. Chengalvaraya Naidu (Dead) By Lrs. -Vs.- Jagannath (Dead) By Lrs. and Others, reported in (1994) 1 SCC 1, the Hon'ble Apex Court held that a fraud is an act of deliberate deception with these design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party and if a judgment is passed in such a situation the said judgment is a nullity.

8. In the present case in hand, the petitioner was able at least to show before the court below two sets of GD Entries bearing the same Nos. 375 and 377 both dated 14.05.2002. The contents of the two sets of GD Entries are totally different, one speaks of the vehicular accident, on the other hand, the other set speaks of something which is beyond the one recorded in the former set. Herein it would be appropriate to consider the ratio laid down in Joginder Singh -Vs.- Roshan Lal, reported in (2002) 9 SCC 764, the respondent therein claimed that 'acrylamide' was a synthetic adhesive and entitled to duty free clearance against value based advanced licenses pertaining to the export of leather goods. The Asstt. Commissioner, Customs rejected the claim. Commissioner (Appeals) Customs accepted the claims. Before the said authorities the respondent relied upon the opinion from expert institute including an opinion from a Professor, University Department of Chemical Technology, Mumbai. The order of Commissioner (Appeals) was passed on 14.06.1995. In November 1996 Central Intelligence Unit of the Mumbai Custom House commenced an investigation and it was revealed that there was reason to doubt the veracity of some of the documents. The appellant filed an appeal before the appropriate Tribunal alongwith delay condonation application. The Tribunal declined to condone the delay taking the view of a decision

of the Hon'ble Apex Court. Allowing the appeal against the order of rejection of delay condonation the Hon'ble Apex Court held as follows:-

"6. The Tribunal would appear to have lost sight of the cardinal principle which is enshrined in Section 17 of the Limitation Act that fraud nullifies everything. If the Tribunal was satisfied, as it ought to have been upon these facts, that there might be some fraud, there was every reason for it to condone the delay and to hear the appeal..."

9. Keeping in view the said ratio as referred hereinabove, I am of the opinion that the learned court below also lost sight of the cardinal principle of Section 17 of the Limitation Act. Moreover, the learned court below ought to have drawn the satisfaction prima facie that a fraud had taken place and in order to enter into the issue of fraud it would have been proper to take up the review petition for its admission but the learned court below failed to appreciate the said cardinal principle in Section 17 of the Limitation Act and also the principle that fraud nullifies everything. Thus I am constrained to set aside the impugned order dated 18.04.2015 passed in Misc. MAC Case No.10/2014 by the learned Additional Session Judge, FTC, Darrang at Mangaldoi which I accordingly do. The delay of 1429 days is condoned and the learned Court below/ the Tribunal shall hear the review petition on merits without being influenced by the earlier judgment and award passed in MAC Case No. 42/2008. Parties to this petition shall appear before the Tribunal at Mangaldoi on 27.02.2009...."

7. Mr. Deori, learned counsel for the opposite parties/respondents while vehemently objecting the submission of Mr. Picha, learned counsel for the applicants, submits that no ground is made out for condoning the hopelessly delay of 3125 days in filing the connected appeal. There is no explanation on each day's delay much less any explanation in the application. He submits that no supported documents have been filed along with the application so as to show that there was no inordinate delay in filing the connected appeal after huge delay of 3125 days. Mr. Deori, learned counsel further submits that the

merits of the case cannot be considered at the time of consideration for condonation of delay. The section 17 of the Limitation Act shall not apply in the present case as there is no question of fraud during the proceedings before the learned District Judge, as it clearly provides the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. Therefore, he submits that the present application deserves to be dismissed as no ground much less the sufficient cause has been shown by the applicants for condoning the huge delay of 3125 days in filing the connected appeal.

8. In support of his submission, Mr. Deori, learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of *Pathapati Subba Reddy & Ors. Vs. Special Deputy Collector(LA)*, reported in *2024 SCC Online SC 513*.

9. I have considered the submissions advanced by the learned counsels for the parties.

10. It is settled law that the Court should not adopt an injustice-oriented approach in dealing with the application for condonation of delay in filing appeals and rather follow a pragmatic line to advance substantial justice. Generally, the Courts have adopted a very liberal approach in construing the 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the Courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of the justice. It is held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is

necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, however, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay.

11. It is also equally held by the Hon'ble Supreme Court that the phrases 'liberal approach', 'justice oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

12. On consideration of the materials, it transpires that the applicants on having coming to know the judgment and decree dated 20.01.2014 passed by the learned District Judge, Tezu has filed an appeal before the Deputy Commissioner, Tezu. The Deputy Commissioner has disposed of the appeal on 23.02.2017 by holding that the disputed land belongs to the respondent, namely, Rajen Miuli, basing on the judgment and decree passed by the learned District Judge dated 20.01.2014. Thereafter, the applicants have filed an application being I.A. No.03(L)2021 basically for revocation of the legal heir certificate obtained by the respondents in respect of their mother, which according to the applicants was the basis for the impugned judgment and decree passed by the learned District Judge. Thereafter, the interlocutory application was withdrawn with a liberty to approach or file application before the appropriate forum or afresh. The applicants have filed the present appeal against the judgment and decree dated 20.01.2014. In the whole process, it took the applicants a long period of 3125 days in filing the connected appeal.

13. Having considered the causes shown and submission of the learned counsel for the applicants that fraud has been played while obtaining the legal heir certificate in respect of their mother on which basis the judgment and order dated 20.01.2014 has been obtained and considering that the applicants have pursued a wrong remedy in the *bonafide* having no jurisdictions, which consumed a long period of 3125 days, this Court is of the view that the applicants could able to show sufficient cause which prevented them to file the connected appeal within a period of limitation. Thus, I am of the view that the present application deserves to be allowed by condoning the delay of 3125 days in filing the present appeal.

14. In the case of *Pathapati Subba Reddy (supra)*, the Hon'ble Supreme Court after consideration of the earlier judgment has held and observed, which is reproduced hereinbelow:-

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient*

cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision...."*

15. In view of the attending facts of this present case and also in the light of the above legal position as enunciated by the Hon'ble Supreme Court, I am satisfied that the applicants have shown a sufficient cause which prevented them to file the connected appeal within a period of limitation. Accordingly, the delay of 3125 days in filing the connected appeal is condoned. In a result, the interlocutory application stands allowed and disposed of.

JUDGE

Comparing Assistant