

GAHC010139352023



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

Case No.: I.A.(Civil)/1043/2019

MD. NURMOHAMMAD
S/O- LATE JABAN ALI
R/O- VILL.- WEST SINGIMARI
MOUZA- LAWKHOWA
P.S. RUPAHIHAT
DIST.- NAGAON
ASSAM

VERSUS

SRI D. MD. NURUL ISLAM AND 3 ORS.
S/O- MD. YAKUB ALI
R/O- VILL.- WEST SINGIMARI
MOUZA- LAWKHOWA
P.S. RUPAHIHAT
DIST.- NAGAON
ASSAM

2:MD. TAIJUL ISLAM
S/O- MD. YAKUB ALI
R/O- VILL.- WEST SINGIMARI
MOUZA- LAWKHOWA
P.S. RUPAHIHAT
DIST.- NAGAON
ASSAM

3:MD. ZIARUL ISLAM
S/O- MD. YAKUB ALI
R/O- VILL.- WEST SINGIMARI
MOUZA- LAWKHOWA
P.S. RUPAHIHAT
DIST.- NAGAON
ASSAM

4:MD. YAKUB ALI

S/O- LATE AHMEDI SHEIKH
R/O- VILL.- WEST SINGIMARI
MOUZA- LAWKHOWA
P.S. RUPAHIHAT
DIST.- NAGAON
ASSAM

For the applicant(s) : Mr. A. Borkakati, Advocate

For the respondent (s) : Mr. A. Mobaraque, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

05.04.2024

This is an application under Section 5 of the Limitation Act for condoning the delay of 591 days in preferring the accompanying Second Appeal against the judgment and decree dated 30.05.2016 passed in Title Appeal No.2/2015 by the Court of the Additional District & Sessions Judge, FTC, Nagaon.

2. From a perusal of the paragraph Nos.2 to 6 of the said application, it transpires that the earlier counsel who was representing the applicant did not inform immediately after the judgment was delivered on 30.05.2016. The earlier counsel informed the applicant only on 24.12.2016. It is further seen that the applicant thereupon who did not have a good financial condition came over to Guwahati and enquired with the counsel at Guwahati as to what steps are required to be taken. Mr. A. Barkataki, the learned counsel for the applicant informed the applicant's counsel at Nagaon that the applicant is required to file a Second Appeal along with

an application seeking condonation of delay on 20.02.2017 after going through the papers. It is relevant to mention that on 30.01.2017, the applicant provided the details to the counsel. The counsel for the applicant further informed the applicant's counsel at Nagaon as regards the expenses and costs which would be involved in preferring the said Second Appeal. Under such circumstances, as the applicant was not so affluent financially, he went back to his native town and collected money by selling his livestock in as much as it was in the month of March, 2017, the said counsel for the applicant at Nagaon informed him. Thereafter, the applicant could collect the money which was handed over in the month of June, 2017 to the counsel for the applicant. The delay occurred as the applicant suffered on account of ill health. However, no such document has been placed on record to support such statement. It has been stated in the application that the counsel for the applicant at Guwahati lost the papers on account of shifting. There is no affidavit however filed by the counsel for the applicant and from a perusal of the affidavit to the application, it is seen that the applicant does not know how to read and write taking into account that he has only put his thumb impression in the affidavit. It further transpires that the counsel for the applicant at Guwahati even after receipt of the fees did not take any action and in fact forgot about the matter as has been stated in the application. The applicant had to yet again provide the set of papers on 25.03.2018. Thereupon, the Appeal was filed on 12.04.2018.

3. This Court also finds it very pertinent to observe that the counsel for the applicant at Guwahati is an experienced counsel having more than 20 years of practice. Though the Appeal was filed on 12.04.2018, but the

counsel did not care to file a condonation application till 20.03.2019 and kept the Appeal in a defective stage. This aspect is important in as much as this very counsel had advised filing of the Second Appeal with a condonation application.

4. This Court during the course of hearing enquired as to why no steps were taken for remedying the defects, the counsel for the applicant had no answer. Therefore from the said application, it appears that it was on account of the mistake of the earlier counsel who represented the applicant in the First Appellate stage and it was on account of the complete negligence on the part of the counsel who has filed the Appeal, there has been considerate delay of 591 days.

5. The facts above mentioned portrays a very sorry state of affairs on account of the conduct of the counsels of the applicant both at Nagaon and Guwahati in as much as they have not given due importance to the cause of the applicant. The overwhelming delay is a result of sheer negligence on the part of the counsels.

6. This Court finds it relevant to note that when an Advocate had taken a responsibility to represent a person in the Court by filing necessary pleadings/Appeals/Applications etc., it is the bounden duty of the advocate to do so to the best of his ability keeping in mind the code of ethics and conduct of the Advocate. Not doing so, touches on the nobility of the legal profession which is one of the facets of the administration of justice. In short, the services of the Advocates to their clients should be graced with compassion, morality and law.

7. Now coming back to the instant case, this Court is of the opinion that

the delay in filing the Appeal is primarily on account of the mistake of the counsels. This Court under such circumstances, taking into account that the legal profession is noble would not like to penalize the applicant for the fault of his counsels. Under such circumstances, this Court condones the delay of 591 days in preferring the accompanying Appeal.

8. This Court cannot also be unmindful of the prejudice so caused to the respondents in as much as the judgment and decree was passed on 30.05.2016 and the Appeal was filed on 12.04.2018 and was kept defective till 20.03.2019. The delay as stated above was primarily on account of the Advocate of the applicant. Under such circumstances, this Court imposes costs upon the counsel of the applicant who filed the Appeal for his negligence. Not doing so would send a wrong signal.

9. The question which arises is what costs should be imposed. The applicant had in his application alleged that it was on account of both his counsels at Nagaon and Guwahati, the delay had occurred. The applicant as stated above is not literate as he admittedly does not know how to read and write. The application has been filed by the counsel of the applicant at Guwahati and he also during the course of hearing admitted drafting the same. He also did not deny to the allegations and contents of the application. Therefore, this Court is of the opinion that a cost of Rs.25,000/- should be imposed upon the counsel for the applicant who filed the Appeal, which this Court is of the opinion would be reasonable.

10. The said cost of Rs.25,000/- be deposited by Mr. A. Barkataki, the learned counsel before the Registry of this Court on or before 24.04.2024.

11. The opposite party Nos.1 to 3 would be at liberty to file an application before the Registry of this Court for release of the amount.
12. The I.A. therefore stands allowed subject to the cost so imposed.
13. The Registry shall register the accompanying Second Appeal and list the matter at the stage of Order XLI Rule 11 of the Code of Civil Procedure on 29.04.2024.

JUDGE

Comparing Assistant