

GAHC010067262024



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

Case No. : I.A.(Civil)/1087/2024

JOYDEV BISWAS AND ANR.
S/O SRI SATYALAL BISWAS, VILL.- NO. 1 GAROKOTA, P.O.- BHODEAGURI,
P.S.- KACHUGAON, DIST.-KOKRAJHAR, BTAD, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, LAND REVENUE DEPTT.
GOVT. OF ASSAM, DISPUR, GUWAHATI-6

Advocate for the Petitioner : MR. S Z RAHMAN,

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 23-09-2024

Heard Mr. R. Mazumdar, learned counsel for the applicant. Also heard Mr. S. Dutta, learned counsel for the respondent nos. 1 & 3; Mr. R.B. Bora, learned counsel for the respondent nos. 2 & 4; and Mr. C.K.S. Baruah, learned Government Advocate, Assam for the respondent nos. 5, 6, 7 & 8.

2. By way of this interlocutory application, the applicant is seeking condonation of delay of 166 days which has occurred in filing the accompanying interlocutory application, M.C. no. 26/2024 for restoration of W.P.(C) no. 2977/2019. Pursuant to W.P.(C) no. 2977/2019 being dismissed on 13.09.2023 for non-prosecution, an application for restoration of W.P.(C) no. 2977/2019 was filed on 28.03.2024. However, a delay of 166 days by them had occurred in filing the interlocutory application. Subsequently, this present application has been filed.

3. Mr. Mazumdar, learned counsel for the applicant submits that the delay has been totally unintentional and the same has occurred due to reasons beyond the control of the applicant.

4. Per contra, Mr. Bora submits that the grounds stated are not sufficient and therefore, the delay sought ought not to be condoned by this Court.

5. I have heard the learned counsel for the parties and perused the materials available on record.

6. Paragraph 3 of the interlocutory application is reproduced hereunder for ready reference :

3. That the applicants beg to state that the date of dismissal of the writ petition is 13.09.2023 and the application for restoration had to be filed on or before 13.10.2023, but it is filed on 28/03/2024 and as such, there is delay of 166 days in preferring the present application for restoration of the writ petition vide WP(C) No.2977/2019. This delay is due to the fact that the applicant No.1 is mainly handling the case and in favor of the other applicant also, but the applicant No.1 and his family consisting of his wife and 7 years old son Pranab Biswas went to AIG Hospitals, Hyderabad, Telengana as the applicant No.1 and his son have been suffering from Acute Gastric and Eye problem and acute allergy and pneumonia respectively for better treatment and they were under

treatment since 06.11.2023 and 07.11.2023 respectively and till date, for which the applicant No.1 had to stay at Hyderabad for treatment and they were under rest w.e.f. 06.11.2023 and 07.11.2023 respectively till February, 2024 and as such, was unable to come to Guwahati for the purpose of filing and swearing affidavit. After getting relief to some extent, he met the lawyer and requested to prepare the necessary application and accordingly, this application is prepared and filed on 28/03/2024.

However, the applicant No.2, has been staying at Mumbai for treatment of her husband Annaram Boro as he has been undergoing treatment for failure of both the kidneys in MGM Medical College & Hospital, Kamothe, Navi Mumbai and it is pertinent to mention herein that the daughter namely, Punam Boro of the applicant No.2 was hospitalised in HCG Cancer Centre, Mumbai as she had suffered from cancer and after struggling with cancer her daughter expired on 13.11.2022 and for the treatment of the husband of the applicant No.2, she has been staying in Mumbai till date.

Hence, there is delay of 166 days in preferring the application for restoration of the WP(C) No.2977/2019. For all these reasons, there is delay of 166 days which is not at all wilful or intentional, rather it is due to unavoidable circumstances, as stated above, and as such, the same may be condoned in the interest of justice.

Copy of the order dated 13.9.2023 passed in WP(C) No.2977/2019 is annexed herewith and marked as Annexure- 1.

Photocopies of the medical particulars of the applicant No.1 and his son are annexed herewith and marked as Annexure-2 and 3 respectively.

Photocopies of medical particulars of the husband and the death certificate of the daughter of the applicant No.2 are annexed herewith and marked as Annexure- 4 & 5 respectively.

7. From a reading of the aforesaid explanations, it appears that the delay occurred primarily for the medical health condition of the applicant no. 1 and his son for which they were under treatment at Hyderabad. It further appears that

the applicant no. 2 who was staying at Mumbai for the treatment of her husband who was undergoing treatment for failure of both kidneys in MGM Medical College & Hospital, Navi Mumbai and of her daughter as well, who was battling from cancer was undergoing treatment at Mumbai and who ultimately expired on 13.11.2022. In support of the aforesaid explanation, it appears that the applicant has placed the medical particulars of the applicant no. 1 and his son as well as the photocopies of the medical particulars of the hospital and the death certificate of the daughter of the applicant no. 2. The explanation is bona fide and sufficient. As such, in the interest of justice, the delay of 166 days stands condoned.

The present interlocutory application is allowed.

JUDGE

Comparing Assistant