

GAHC010147292023



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

Case No. : I.A.(Civil)/2015/2023

DILIP ROY AND 3 ORS.
S/O LATE KHITISH ROY
RESIDENT OF VILLAGE REVENUE TOWN, PO AND PS JAGIROAD, DIST
MORIGAON, ASSAM 782410

2: KARTIK ROY
S/O LATE KHITISH ROY
RESIDENT OF VILLAGE REVENUE TOWN
PO AND PS JAGIROAD
DIST MORIGAON
ASSAM 782410

3: GANESH ROY
S/O LATE KHITISH ROY
RESIDENT OF VILLAGE REVENUE TOWN
PO AND PS JAGIROAD
DIST MORIGAON
ASSAM 782410

4: DEEPANKAR ROY
S/O DILIP ROY
RESIDENT OF VILLAGE REVENUE TOWN
PO AND PS JAGIROAD
DIST MORIGAON
ASSAM 78241

VERSUS

GANESH KARMAKAR
C/O MAA BISHAHARI JEWELLERS, KISHOR CLUB ROAD, PO JAGIROAD,
DIST MORIGAON, ASSAM 782410

Advocate for the Petitioner : MR. S K GHOSH

Advocate for the Respondent : MR. S CHAKRABORTY

Linked Case :

DILIP ROY AND 3 ORS.

VERSUS

GANESH KARMAKAR A

Advocate for the applicant(s): Mr. SK Ghosh

Advocate for the respondent(s): Mr. S Chakraborty

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

24.04.2024

This is an application under Section 5, read with Section 12 of the Limitation Act, 1963 for condoning the delay of 565 days in filing the accompanying second appeal.

2. From the materials on record, it reveals that a suit was filed by the respondent herein seeking declaration of tenancy and

restoration of possession of the rented premises on account of the rented premises having been gutted by fire. The said suit which was filed was registered and numbered as Title Suit No.91/2014.

3. It is very pertinent to mention that in the said suit there were four defendants, who are the applicants in the instant application. In the said suit, the defendants jointly filed a written statement denying the claim of the plaintiff. It was the specific statement made in paragraph 17 of the said written statement that as the land had been partitioned amongst the defendant Nos.1, 2 and 3, it would be difficult to accommodate the plaintiff by restoring possession. Be that as it may, the suit was dismissed vide judgment and decree dated 01.12.2016.

4. The record further reveals that the respondent herein as appellant preferred an appeal before the Court of the learned Civil Judge, Morigaon being Title Appeal No.3/2017. The said appeal was also dismissed, however, with costs. In paragraph 22 of the said judgment of the learned First Appellate Court, it was observed that though the plaintiff was not entitled to the restoration of tenancy as well as possession of the premises, but the plaintiff would be entitled to an amount of Rs.2,00,000/- as compensation, which was directed to be paid within three months from the date of the said judgment and decree dated 25.09.2017.

5. Being aggrieved by that part of the judgment passed by the learned First Appellate Court to the extent of directing the defendants, who are the applicants herein to pay the amount of Rs.2,00,000/- as compensation, the applicant filed an application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) before this Court, which was registered and numbered as CRP No.3/2018.

6. This Court vide order dated 08.01.2018 issued notice. Thereupon, vide order dated 25.09.2019, the said revision application was withdrawn. Be that as it may, this Court did not observe anything as regards the filing of the revision application being in a wrong judicial forum. However, liberty was granted to the applicant to withdraw the revision application and file a regular second appeal. Thereupon, it appears that the instant appeal was filed on 21.07.2023. From a perusal of the said application, it was an admitted fact that after taking into account the extended period of limitation, as provided by the Supreme Court in its order dated 10.01.2022 in WP(C)No.3/2020 and also the period during which the revision application was filed, there was a delay of 565 days in preferring the regular second appeal. The reasons which have been assigned in the instant application is that the applicant No.1 was under treatment at the LGB Regional Institute of Mental Health at Tezpur being a psychiatric patient and as such not in a position to collect the brief from his earlier counsel Late Rupjyoti Bordoloi who was engaged to file the second appeal. It was also mentioned that

during the said period Late Rupjyoti Bordoloi had expired and only on 20.06.2023 the applicant No.1 could collect the file from his junior, one Shri R Ali. It is under such circumstances, the delay had occasioned.

7. Upon filing of the instant application, notice was issued and the respondent herein duly appeared by filing a written objection, contesting the application on the ground that the grounds so assigned are not at all sufficient for condoning the delay.

8. This Court had duly heard Mr. SK Ghosh, the learned counsel appearing on behalf of applicants and Mr. B Chakraborty, the learned counsel appearing on behalf of the respondent. Before further proceeding, this Court finds it relevant to take note of the recent judgment of the Supreme Court in the case of *Pathapati Subba Reddy (Died) by LRs and others Vs. Special Deputy Collector (LA)* reported in *2024 SCC OnLine SC 513*, wherein the Supreme Court after making a copious detail of all the well settled precedents had summarized the principles for condoning the delay. Paragraph 26 of the said judgment being relevant is quoted 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."

9. From a perusal of the various clauses in paragraph 26 as quoted hereinabove, it would be seen that the Supreme Court duly observed that the provisions of 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. It was further observed that 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. It was categorically observed that the 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.

10. In the backdrop of the above, if this Court now takes note of the facts involved in the instant case, it would be seen that the documents evidencing that the applicant No.1 was a psychiatric patient are documents which have been enclosed as Annexures 3 to 6. A perusal of the said documents clearly show that the applicant

No.1 was an outpatient and he was only prescribed certain medicines. There was no other medical document to show that the applicant No.1 was incapacitated from taking steps or doing the day to day works. Be that as it may, this Court further finds it relevant to take note of that the applicant Nos. 2, 3 and 4 were very much there and there is not a single whisper in the application as to why they were not in a position to take appropriate steps for filing of the second appeal. Relevant herein to note that the applicant No.4 is the son of the applicant No.1.

11. Under such circumstances, the reasons so assigned in the application, in the opinion of this Court are not sufficient for condoning the delay of 565 days in filing the regular second appeal, for which the instant application stands dismissed. The consequential effect of the dismissal of the instant application is that the accompanying regular second appeal so filed has become barred by limitation for which the same cannot be entertained.

JUDGE

Comparing Assistant