

GAHC010149172023



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

Case No. : I.A.(Civil)/1900/2023

TARIFJAN BEWA AND 6 ORS.
W/O MAJAM ALI, RESIDENT OF VILLAGE BOROUDMARI, PS AND CIRCLE-
LAKHIPUR, DIST GOALPARA, ASSAM.

2: ABU TAHER
S/O MAJAM ALI
RESIDENT OF VILLAGE BOROUDMARI
PS AND CIRCLE LAKHIPUR
DIST GOALPARA
ASSAM.

3: ABU BAHAR
S/O MAJAM ALI
RESIDENT OF VILLAGE BOROUDMARI
PS AND CIRCLE LAKHIPUR
DIST GOALPARA
ASSAM.

4: ABU JAHER
S/O MAJAM ALI
RESIDENT OF VILLAGE BOROUDMARI
PS AND CIRCLE LAKHIPUR
DIST GOALPARA
ASSAM.

5: ABU SAMA
S/O MAJAM ALI
RESIDENT OF VILLAGE BOROUDMARI
PS AND CIRCLE LAKHIPUR
DIST GOALPARA
ASSAM.

6: BEGUM MOZIDA HUSSAIN
W/O DELOWAR HUSSAIN

D/O MAJAM ALI
RESIDENT OF VILLAGE ITAKHULI
PS LAKHIPUR
DIST GOALPARA
ASSAM.

7: AJIRON NESSA
W/O ABDUL HAKIM
D/O MAJOM ALI
RESIDENT OF VILLAGE ITAKHULI
PS LAKHIPUR
DIST GOALPARA
ASSAM

VERSUS

NALU SHEIKH (DECEASED), S/O LATE FALU DEWANI, HIS LEGAL HEIRS
ABDUL HAI AND ORS.
S/O LATE LATE NALU SHEIKH, RESIDENT OF VILLAGE SHIALKANDI, PO
JALESWAR, PS LAKHIPUR, DIST GOALPARA, ASSAM.

2: ABDUL MAZID MONDAL
S/O NALU SHEIKH
RESIDENT OF VILLAGE SHIALKANDI

PO JALESWAR
PS LAKHIPUR
DIST GOALPARA
ASSAM.

3: ABDUS SABUR MONDAL
S/O NALU SHEIKH
RESIDENT OF VILLAGE SHIALKANDI

PO JALESWAR
PS LAKHIPUR
DIST GOALPARA
ASSAM.

4: SANTOSH ALI MONDAL
S/O NALU SHEIKH
RESIDENT OF VILLAGE SHIALKANDI

PO JALESWAR
PS LAKHIPUR
DIST GOALPARA
ASSAM.

5:SAMSER ALI MONDAL
S/O NALU SHEIKH
RESIDENT OF VILLAGE SHIALKANDI

PO JALESWAR
PS LAKHIPUR
DIST GOALPARA
ASSAM.

6:HABIL SEIKH
S/O ROHIM BAKSHA

RESIDENT OF VILLAGE SHIALKANDI

PO JALESWAR
PS LAKHIPUR
DIST GOALPARA
ASSAM

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : MR. A F N U MOLLAH (R-1 to 5)

In RSACase No. 3827/2022 (Filing Number)

TARIFJAN BEWA AND 6 ORS.

VERSUS

NALU SHEIKH (DECEASED) AND ORS. E

Advocate for : MR. M A SHEIKH
Advocate for : appearing for NALU SHEIKH (DECEASED) AND ORS. E

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

22.07.2024

- 1.** Heard Mr. M.A. Sheikh, the learned counsel for the applicants. Also heard Mr. A.F.N.U. Mollah, learned counsel for the opposite parties.
- 2.** This application under Section 5 of the Limitation Act, 1963 has been filed by the applicants for condoning the delay of 1192 days in preferring the connected Regular Second Appeal by the applicants challenging the order of the First Appellate Court passed on 30.06.2016 in Misc.(J) Case No. 12/2016, arising out of T.A. No. 07/2015 by the learned Civil Judge, Goalpara, whereby the prayer for condoning the delay of 572 days was not condoned.
- 3.** The learned counsel for the applicants has submitted that the applicants had filed a Title Suit before the Court of learned Munsiff No. 1, Goalpara which was registered as T.S. No. 74/2012 praying for declaration of right, title and interest and recovery of khas possession of the suit land which the applicants/plaintiffs claimed to be theirs. However, the said suit was dismissed *ex-parte* on 12.11.2013.
- 4.** Thereafter, the applicants preferred a review petition which was registered as Misc.(J) Case No. 18/2014. However, the learned Munsiff No. 1, Goalpara rejected the said review petition on 19.08.2014. Thereafter, the present applicants preferred an appeal against the order of the Trial Court. As the said appeal was also filed beyond the period of limitation, an application for condonation of delay was also filed by the applicants before the First Appellate Court for condoning the delay of 572 days in preferring the first appeal.
- 5.** However, by order dated 30.06.2016, the Court of the learned Civil

Judge, Goalpara dismissed the condonation of delay application filed by the present applicants passed in Misc. (J) Case No. 12/2016.

6. The applicants have now preferred a second appeal impugning the order of the First Appellate Court. However, this time also there is a delay of 1192 days and therefore the instant Interlocutory Application has been filed by the applicants under Section 5 of the Limitation Act, 1963 for condonation of the delay in preferring the second appeal.

7. The learned counsel for the applicants has submitted that out of the seven applicants, who have approached this Court, only applicants No. 2, namely, Abu Taher is working as an Assistant Teacher at Jambari High Madrassa, Jambari in the district of Dhubri and is somewhat financially sound. The other applicants, namely, applicant Nos. 1,3,4,5, 6 and 7 are daily wage earners and they are very poor persons and as such they were unable to arrange money to file the connected second appeal within time.

8. The learned counsel for the applicants has also submitted that though the order sought to be impugned in the connected second appeal was passed on 30.06.2016, however, in the year 2020, the applicants became jobless due to Covid-19 which was prevalent at that time and same has also added to the delay in preferring the connected second appeal.

9. The learned counsel for the applicants has also submitted that due to poverty, the applicants were unable to arrange money for preferring the connected second appeal and they contacted the engaged counsel only on 10th March, 2022, who prepared the case within 13 days time and filed the second appeal along with the condonation of delay application on 23rd March, 2023.

10. The learned counsel for the applicants has also submitted that as the question of right, title and interest of the suit property is involved in this case

which the applicants claimed that the respondents have unlawfully possessing, the point of limitation in that context would be only a technical point. According to the learned counsel for the applicants and the Court should take a lenient view of the matter and should condone the delay of 1192 days in preferring the connected second appeal. The learned counsel for the applicants has also submitted that to compensate the respondents even cost may be imposed for allowing the condonation of delay application filed by the applicants for the ends of justice.

11. On the other hand, the learned counsel for the opposite parties have submitted that the respondents have, in the written objection filed in this case, have also annexed the copies of land documents belonging to the applicants, which shows that the applicants are the owners of landed properties and therefore, their plea that they are poor person is not sustainable.

12. The learned counsel for the opposite parties have also submitted that the applicant No. 2 is admittedly an Assistant Teacher, at a Madrassa and is admittedly of sound financial capacity, therefore, the plea of poverty taken by the applicants may not be regarded as sufficient cause to condone the delay.

13. The learned counsel for the opposite parties have also submitted that in preferring the first appeal also by the same applicants, against the order of the Trial Court, there was a considerable delay and while preferring the condonation of delay application before the First Appellate Court, the applicants took the plea that their engaged counsel was at fault for not preferring the first appeal within the period of limitation. It is submitted that the said plea was correctly discarded by the First Appellate Court.

14. The learned counsel for the applicants have submitted that in view of the valuable rights accrued to the opposite parties in respect of the suit

property, the plea of the poverty for condoning the delay in preferring the connected second appeal should not be taken leniently by this Court and as the applicants have failed to show sufficient cause for not preferring the appeal within the period of limitation prescribed for preferring the second appeal the application for condonation of delay may be dismissed.

15. I have considered the submissions made by the learned counsel for the rival parties and have perused the materials available on record.

16. As observed herein before this Interlocutory Application has been registered on filing of an application under Section 5 of the Limitation Act, 1963 for condoning the delay in preferring the connected regular second appeal by the applicants, whereby the order of the First Appellate Court passed in Misc. (J) Case No. 12/2016 arising out of T.A. No. 07/2015 on 30.06.2016 has been challenged.

17. Article 116 of the Limitation Act, 1963 provides that the period of limitation for filing an appeal to High Court is 90 days from the date of the order/decreed against which appeal is preferred.

18. In the instant case, admittedly, there is a delay of 1192 days in preferring the connected regular second appeal by the applicants.

19. On perusal of the condonation of delay application filed by the applicants, it appears that main ground shown by the applicants for their inability to prefer the appeal within the statutory period of limitation of 90 days is inability of the applicants to arrange for money to pay the cost/fees of the advocate at the cost of the case as well as also due to the fact that during Covid-19 which was prevalent for 2 years from year 2020, the applicants became jobless. Though even if we ignore the written objection filed by the opposite parties, wherein, they have shown the land documents in respect of

the land own/possessed by the applicants to show their financial soundness, it appears that the impugned order was passed in the year 2016 and by no stretch of imagination the plea taken by the applicants to justify more than 7 years of delay may be accepted under facts and circumstances of this case. Moreso, when the first appeal filed by the applicants before the First Appellate Court was also dismissed on the ground of limitation only.

20. The Supreme Court of India in the case of "**Sitaram Ramcharan Vs. M.N. Nagarshana**," reported in "**(1960) 1 SCR 875**," has observed as follows:-

".....It cannot be disputed that in dealing with the question of condoning delay under Section 5 of the Limitation Act, the party has to satisfy the Court that the sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has already been under-stood to mean that the explanation has to cover the whole of the period of delay....."

21. In "**Mani Devraj Shah Vs. Municipal Corporation of Brihan**," reported in "**2012 5 SCC 157**," the Apex Court has observed as follows:-

"23. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the ex-planation. If the court finds

that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

22. However in the instant case, it appears that the applicants have not explained the whole 7 years period of delay and have merely taken the plea of poverty and Covid-19 as the cost for delay in filing the connected second appeal which does not appears to be sufficient cause within the meaning of Section 5 of the Limitation Act, 1963.

23. In the instant case, though the applicants have also taken the pleas of natural lockdown due to Covid-19 and their loss of income source during such lockdown, however, it is pertinent to mention that the national lockdown due to Covid-19 had started on 23.03.2020, whereas the limitation period for preferring the connected second appeal in this case expired much earlier than initiation of lockdown. The limitation period expired in the month of September, 2016, and the applicants have not shown any ground for not preferring the connected appeal before initiation of lockdown on 23rd March, 2020 though more than 3 years 6 months period was there in between lapse of the limitation period in this case and initiation of national lockdown.

24. In view of above, it appears that the conduct of the applicants in pursuing the relief has been thoroughly negligent and it reflects lack of *bona fides* on the part of the applicants in preferring the connected second appeal after a lapse of more than 7 years (1192 days).

25. In view of above, this Court is of considered opinion that the applicants

have failed to show sufficient cause for not been able to file the connected second appeal within the period of limitation of 90 days and they have failed to justify the delay of 1192 days in preferring the connected second appeal and therefore, the application filed by the applicants under Section 5 of the Limitation Act, 1963 for condonation of delay of 1192 days in preferring this connected second appeal is hereby dismissed.

26. This Interlocutory Application is accordingly dismissed.

27. The connected appeal also fails and is dismissed being barred by limitation prescribed under Article 116 of the Limitation Act, 1963.

JUDGE

Comparing Assistant