

GAHC010175972022



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

I.A.(Civil)/3156/2022

1. Ratanlal Agarwalla,
S/o. Lt. Duli Chand Agarwalla,
R/o. Panbari, P.O. Panitola,
P.S. and District-Tinsukia, Assam.
2. Shiva Kumar Agarwalla
S/o. Lt. Duli Chand Agarwalla
R/o. A.T. Road Panitola
P.O. Panitola
P.S. and District-Tinsukia,
Assam

.....Applicants

-Versus-

1. Sashi Devi Jalan,
W/o. Sri Ishwar Prasad Jalan,

R/o. A.T. Road, Hijuguri,
P.O. Hijuguri,
District-Tinsukia,
Assam.

.....Respondents

For Applicants : Mr. M. Hussain
For Respondent : Mr. S. Chauhan

Date of Order : 22.08.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER**

(MRIDUL KUMAR KALITA, J)

- 1.** Heard Mr. S. Sharma, learned counsel for the applicants. Also heard Mr. S. Chauhan, learned Counsel for the respondent.
- 2.** This application under Section 5 of the Limitation Act, 1963 has been filed by the applicants, namely, Shri Ratanlal Agarwalla and Shri Shiva Kumar Agarwalla, praying for condonation of delay of 3322 days in filing the connected Revision Petition.

3. In the connected Revision Petition, the applicants have impugned the judgment dated 09.05.2011 passed by the learned Civil Judge, Tinsukia in Miscellaneous Appeal No. 07/2010, whereby the Order dated 23.02.2010 passed by learned Munsif No. 1, Tinsukia in Misc.(J)Case No. 35/2009 was affirmed.
4. The opposite party of this Interlocutory Application, namely, Smt. Sashi Devi Jalan, had filed a Title Suit for declaration that the mutation in the name of the present petitioners in respect of the suit land in the name of the defendants in the revenue records is void, inoperative and bad in law and for cancellation of the petition and for the declaration of title by way of adverse position. The said suit was registered as Title Suit No. 23/2004.
5. The above mentioned suit was decreed ex-parte on 14.07.2004 by the Court of learned Munsif No. 1, Tinsukia.
6. It is submitted by the learned counsel for the applicants that the applicants came to know about the aforesaid ex-parte decree only on 30.03.2009 and thereafter, they filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 for setting aside the *ex-parte* decree. The said

application was registered as Misc.(J) Case No. 35/2009.

- 7.** The present opposite party contested the said Misc. Case by filing written objection. Evidence was also adduced by both the sides in support of their contentions. However, by order dated 23.02.2010, the Trial Court dismissed the application for setting aside the ex-parte decree filed by the present applicants.
- 8.** Dissatisfied with the aforesaid order, the applicants preferred a Miscellaneous Appeal under Order 43 Rule 1 (d) of the Code of Civil Procedure, 1908. The said appeal was registered as Miscellaneous Appeal No. 07/2010 before the Court of learned Civil Judge, Tinsukia. However, by Order dated 09.05.2011, learned Civil Judge, Tinsukia also dismissed the Miscellaneous Appeal No. 07/2010.
- 9.** The learned counsel for the applicants has submitted that being aggrieved and dissatisfied with the order of learned Civil Judge, Tinsukia in Miscellaneous Appeal No. 07/2010 passed on 09.05.2011, the petitioners approached one Advocate, namely, Mr. A. K. Gupta at Guwahati. The said Advocate advised the petitioners to file a second appeal against the order.

Accordingly, it was informed that an appeal has been filed before this Court.

- 10.** Learned counsel for the applicants has submitted that at the time of engaging Mr. A. K. Gupta as counsel by the above-named applicants, he told them that the appeals normally come up for hearing after about 10 years of the date of filing, and as in between from March 2020 to February 2022, the Court was affected due to COVID-19, the applicants approached their engaged counsel after a lapse of 10 years to inquire about the fate of the second appeal.
- 11.** It is further submitted by learned counsel for the applicants that in the month of May 2022, the son of the applicant No. 1, namely, Deepak Kedia, contacted the engaged counsel Mr. A. K. Gupta by coming to Guwahati and requested him to take expeditious necessary steps for listing of the appeal and he was informed by the engaged counsel that the appeal would be listed within two to three months. However, the son of the petitioner No. 1 was neither informed about the case number of the appeal nor provided with the Memo of Appeal.
- 12.** It is also submitted by learned counsel for the applicants that

after insistence by the son of the applicants No. 1, the counsel provided him Memo of Appeal through one of his friends namely, Prashant Shah. However, the said Memo of Appeal did not contain the number of the case.

- 13.** Thereafter, the son of the petitioner came to Guwahati on 30.05.2022 and met the present set of advocates on 31.05.2022, who obtained the status of the case from the High Court website as SAO No. 05/2011 and found that the case has been dismissed on withdrawal on 24.08.2011.
- 14.** Learned counsel for the applicants has submitted that thereafter also, the petitioner tried to contact the earlier engaged counsel Mr. A. K. Gupta through WhatsApp message and through phone. However, he did not cooperate with the petitioners and did not even supply the case number of the Appeal to the applicants.
- 15.** It is also submitted by learned counsel for the applicants that thereafter on 06.06.2022, the petitioners by engaging an advocate's clerk obtained the certified copy of order dated 24.08.2011 passed in SAO No. 5/2011.

- 16.** Learned counsel for the applicants has submitted that thereafter the son of the petitioner No. 1 met the counsel Mr. A. K. Gupta and inquired as to why he had withdrawn the appeal without any authority from his father and uncle who were the appellants in the said case. However, the said counsel namely, Mr. A. K. Gupta had shown his complete ignorance about order dated 24.08.2011.
- 17.** It is also submitted by learned counsel for the applicant that the said counsel continued to falsely assure the applicants that the appeal is pending and it would be listed and disposed of very soon.
- 18.** It is further submitted by learned counsel for the applicants that thereafter, the applicants decided to lodge a complaint against the counsel Mr. A. K. Gupta before Bar Council of India.
- 19.** Learned counsel for the applicants has submitted that the applicants may not be allowed to suffer due to fault of their engaged counsel who committed professional wrong and acted in an unethical manner by keeping the applicants in dark regarding the fate of the appeal filed by them.

- 20.** Learned counsel for the applicants has submitted that considering the facts and circumstances of this case, the Court should adopt a liberal and justice-oriented approach by condoning the delay, though, the delay is a considerable delay of 11 years. However, it is submitted that the applicants were not at fault and they were actually deceived by their engaged counsel.
- 21.** In support of his submissions, learned counsel for the applicants has cited following rulings:
- i.** Perumon Bhagvathy Devaswom Perinadu Village Vs. Bhargavi Amma by LRS and others reported in (2008) 08 SCC 321.
 - ii.** N. Balakrishnan Vs. M. Krishnamurthy reported in AIR 1988 SC 3222.
 - iii.** Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others reported in AIR 1987 SC 1353.
 - iv.** New Okhla Industrial Development Authority v. Rameshwar @ Ramesh Chandra Sharma (Judgement dated 17.11.2022 in Civil Appeal No. 8331/8345 of 2022).
- 22.** On the other hand, Mr. S. Chauhan, learned counsel for the

respondent has vehemently opposed the prayer for condoning the delay of long period of more than 11 years in this case.

- 23.** Learned counsel for the respondent has submitted that the applicants were negligent in not taking any information about the appeal filed by them for 10 long years merely on the pretext of the assurance given by their counsel that it takes more than 10 years for the listing of the appeal.
- 24.** Learned counsel for the respondent has also submitted that the applicants have failed to give sufficient explanation on day-to-day basis for the period of the delay which is an inordinate delay of more than 11 years.
- 25.** Learned counsel for the respondent has also submitted that the son of the petitioner No.1 came to Guwahati only in the year 2022 to inquire about the case and there is no explanation as to why he did not take any steps for inquiring about the fate of the case before 2022 and waited for 10 long years merely on the assurance given by the engaged counsel for the applicants.
- 26.** Learned counsel for the respondent has submitted that the applicants have failed to sufficiently explain the delay and

therefore, this case which involves a long delay of more than 11 years does not fit into category where the delay may be condoned by taking liberal approach of the matter and hence, he has prayed for dismissing the application for condonation of delay.

- 27.** I have gone through the application filed by the applicants as well as the supporting documents annexed thereto. I have also gone through the affidavit in opposition filed by the respondent side, as well as the reply to the same filed by the applicants. I have also considered the submissions made by learned counsel for both the sides.
- 28.** In the instant case, the delay involved is a long delay of more than 11 years i.e., the delay of 3322 days from the date of the impugned order, i.e., on 09.05.2011.
- 29.** The justification for delay given by the learned counsel for the applicants is that the engaged counsel of the applicant had filed a second appeal against order in this Court and had informed the applicants that it would normally take more than 10 years for the appeals usually to come up for hearing.

- 30.** The applicants through their son namely, Deepak Kedia inquired about the appeal only in the month of May 2022 and at that time also the applicants were informed by the engaged counsel, Mr. A. K. Gupta that the appeal is pending. They were not informed about the fact that the second appeal was withdrawn by the counsel for the applicants on 24.08.2011 itself.
- 31.** It also appears that the applicants have filed a complaint against the engaged counsel, Mr. A. K. Gupta before Bar Council of India and a complaint has been registered as BCI 10/2023.
- 32.** Now, the question before this Court is as to whether the explanation offered by the applicants for approaching this Court after the delay of more than 11 years, under the facts and circumstances of this case, may be accepted as sufficient cause for the delay or not.
- 33.** It is the settled approach in dealing with application for condonation of delay by the Courts, that in order to advance substantial justice, a liberal and justice-oriented approach may be taken in such cases, if the cause shown by the applicant

appears to be plausible.

- 34.** The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice.
- 35.** In the instant case, the applicants have filed a complaint against the engaged counsel Mr. A. K. Gupta before the Bar Council of India and in the said complaint, they have taken the same plea which they have taken in the instant application for condonation of delay i.e. they were not informed regarding the fate of second appeal against order filed by them before this Court rather they were wrongly informed by the engaged counsel that the second appeal against order is still pending.
- 36.** It is also settled that while considering an application for condonation of delay, the length of delay may not be a matter of consideration, if the explanation offered by the applicants appears to be accepted and considered to be a sufficient cause for approaching the Court belatedly.
- 37.** In the instant case, the categorical accusation made by the applicants against their engaged counsel, Mr. A. K. Gupta in the condonation of delay application as well as before the Bar

Counsel of India in the complaint filed by them *prima facie* shows that the delay caused in this case was mainly due to the engaged counsel giving false information to the applicants regarding the fate of the appeal filed by them.

- 38.** Though, there appears to be some lapse on the part of the applicants also in trusting their counsel and remaining dormant for 10 long years without verifying about the fate of the appeal filed by them, however, this Court is of considered opinion that under the facts and circumstances of this case, the cause shown by the applicants in approaching this Court after a delay of more than 11 years may not be totally discarded.
- 39.** This Court is of considered opinion that the grounds shown by the applicants for approaching this Court belatedly may be regarded as sufficient ground justifying the condonation of such delay. However, the laches on their part as indicated above may be compensated by imposing cost on them, which may be paid to the respondents.
- 40.** In view of the above, this Interlocutory Application for condoning the delay of 3322 days in preferring the connected Civil Revision Petition is allowed subject to payment of cost of

Rs. 10,000/- by the applicants to the respondents.

- 41.** The applicants shall deposit the cost to the Registry of this Court within a period of one month from the date of this order and on such payment of cost, the Registry shall register the connected Civil Revision and list it for admission.
- 42.** It is also made clear that on deposit of such cost by the applicant, same shall be disbursed to the respondent by the Registry on proper verification.
- 43.** This Interlocutory Application is accordingly disposed of.

JUDGE

Comparing Assistant