

GAHC010238672017



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

Case No. : I.A.(Civil)/2360/2017

UNION OF INDIA,
REPRESENTED BY THE GENERAL MANAGER CON, N.F. RAILWAY,
MALIGAON, GUWAHATI 781011

VERSUS

GAKUL KALITA and ANR,
S/O MADHU KALITA, VILL. TEZPUR, MOUZA RAMPUR, DIST. KAMRUP
ASSAM, PIN 781132

2:THE COLLECTOR

KAMRUP
GUWAHATI

Advocate for the Petitioner : MS.M CHATTERJEE

Advocate for the Respondent : MRS M D CHOWDHURY (R1)

Linked Case :

UNION OF INDIA

VERSUS

SRI GAKUL KALITA and ANR

Advocate for :

Advocate for : appearing for SRI GAKUL KALITA and ANR

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 11.01.2024

Heard Mrs. U. Chakraborty, learned counsel for the applicant. Mr. K.K. Bhattacharya, learned Govt. Advocate is present for the respondent no.2. None appears on call for the respondent no.1, although the name of learned counsel is reflected in the cause list.

2. At the outset, it may be mentioned that the respondent no.1 had remained absent when the matter was previously listed and called on 15.11.2023 and 28.11.2023. In the order dated 28.11.2023, this Court had recorded that the respondents had remained absent on three consecutive dates and for ends of justice, one last chance was granted to the respondents for appearance.

3. By filing this application under Section 5 of the Limitation Act, the applicant has prayed for condoning the delay of 828 days beyond the period of limitation in filing the connected appeal against the judgment and order dated 08.12.2014 passed by the learned District Judge, Kamrup, Amingaon in Misc. Reference Case No. 211/2014 (New)/Misc. Reference Case no. 20/2000 (Old).

4. In this application, it is projected that the applicant was not made as party in the proceedings of the reference case, which was tried by the learned District Judge, Kamrup, Amingaon. It is also projected that the judgment and award in the said reference case was passed on 08.12.2014 and that after lapse

of more than 2 (two) years, the applicant had received a communication dated 08.03.2017 from the Additional Deputy Commissioner (LA), Kamrup, Amingaon addressed to the Deputy Chief Engineer/CON, N.F. Railway, Maligaon requesting to deposit the balance decretal amount of Rs.63,05,880.64 (Rupees sixty three lakh five thousand eight hundred eighty point six four only) and thereafter, this application was filed on 14.06.2017 and in the process, there was a delay of 828 days in filing the connected appeal.

5. Although none appears on call for the respondent no.1, the affidavit-in-opposition filed by the respondent no.1 has been perused. Amongst others, a defence was taken that this Court by common order dated 26.06.2013 had disposed of L.A. Appeal Nos. 1/2012 to 31/2012 and remanded those 26 reference cases to the Court of learned District Judge, Kamrup (M), Guwahati by directing all the parties including the General Manager, N.F. Railway to appear before the learned reference Court on 18.07.2013. The said order is found to be annexed to this application as Annexure-1.

6. On perusal of the same, the Court does not find that in the order dated 26.06.2013 passed in connection with the 26 reference cases referred above, there is any mention made about Misc. Reference Case No. 211/2014 (New)/Misc. Reference Case no. 20/2000 (Old).

7. In paragraph 4 of the objection, it has been mentioned that the learned District Judge, Amingaon had issued notice to all the parties including the appellant-applicant, but no document has been annexed to show that any notice was sent to the applicant in connection with the said Misc. Reference Case No. 211/2014 (New)/Misc. Reference Case no. 20/2000 (Old). Though it has been mentioned in paragraph 4 of the objection that the learned District Judge, Amingaon had issued notice to all the parties including the application,

but on perusal of the certified copy of the order under appeal, it does not appear from its cause title that the applicant herein was made a party in Misc. Reference Case No. 211/2014 (New)/Misc. Reference Case no. 20/2000 (Old).

8. Therefore, the contents of the paragraph 2 to 9 of the affidavit-in-opposition has no relation with the proceeding of Misc. Reference Case No. 211/2014 (New)/Misc. Reference Case no. 20/2000 (Old). Therefore, the statements made in the affidavit-in-opposition filed by the respondent no.1 appears to be irrelevant and accordingly, the same is rejected being irrelevant. Moreover, the Court finds the said statement to be misleading as reference is made to 26 reference cases, which does not contain the particulars of the Misc. Reference Case No. 211/2014 (New)/Misc. Reference Case no. 20/2000 (Old).

9. Therefore, having noticed that the applicant was not a party to the proceedings of the said reference case before the learned Court below, the Court is inclined to accept the stand of the applicant that they had no notice of the said reference case.

10. Accordingly, the prayer for condonation of delay stands allowed and the delay of 828 days beyond the period of limitation in filing the connected appeal stands condoned.

11. Let the connected appeal be registered and listed in the admission column. When listing the connected appeal, the names of the learned counsel appearing for the respondents in this application shall also be reflected.

JUDGE