

GAHC010305962019



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

Case No. : I.A.(Civil)/134/2020

M/S NORTH EASTERN CHEMICALS INDUSTRIES (P) LTD. AND ANR
A REGISTERED COMPANY UNDER THE PROVISIONS OF THE COMPANIES
ACT, 1956, HAVING ITS REGISTERED OFFICE AT VILLAGE HAJOBARI, P.O.
CHANDRAPUR, DISTRICT KAMRUP AND ADMINISTRATIVE OFFICE AT 3A,
PRAKASH ENCLAVE, HARBALA ROAD, P.O. GUWAHATI-7, REPRESENTED
BY ITS MANAGING DIRECTOR SRI SHANTI KUMAR JALAN

2: SRI SHANTI KUMAR JALAN
S/O LATE JUGAL KISHORE JALAN
R/O 3A
PRAKASH ENCLAVE
HARBALA ROAD
P.O. GUWAHATI-7
REPRESENTED BY ITS MANAGING DIRECTOR SRI SHANTI KUMAR JALA

VERSUS

ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD. AND ANR
A GOVT. OF ASSAM UNDERTAKING , REGISTERED OFFICE AT R.G.
BARUAH ROAD, GUWAHATI-24, DISTRICT KAMRUP, ASSAM

2:M/S GUPTA HITECH INDUSTRIES (P) LIMITED
A REGISTERED COMPANY HAVING ITS REGISTERED OFFICE AT 301 RAM
KUMAR ARCADE
CHATRIBARI
GUWAHATI-78100

Advocate for the Petitioner : MR G N SAHEWALLA, MR. M SAHEWALLA,MR. A
CHETIA,MD ASLAM,MR. P DEKA

Advocate for the Respondent : MR H DAS, MR. N C DAS (r-2),MS. M DEVI (r-2),MR. A DAS (r-
2),MR P GOGOI,FOR CAVEATOR

In

RFA Case No. 18104/2019 (Filing Number)

M/S NORTH EASTERN CHEMICALS INDUSTRIES (P) LTD. AND ANR

VERSUS

ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD. AND ANR

Advocate for :

Advocate for : appearing for ASSAM INDUSTRIAL DEVELOPMENT
CORPORATION LTD. AND ANR

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

12.08.2024

- 1.** Heard Mr. H.K. Sarma, learned counsel for the applicants. Also heard Ms. N.C. Das, learned Senior Counsel, assisted by Ms. J. Baishya, learned counsel for the respondent No. 2. None has appeared for respondent No. 1.
- 2.** This application under Section 5 of the Limitation Act, 1963 has been filed by the applicants, namely, 1. M/S North Eastern Chemicals Industries (P) Ltd. and 2. Sri Shanti Kumar Jalan praying for condonation of delay of 34 days in filing the connected regular first appeal against the judgment and decree dated 02.08.2019 passed by the learned Civil Judge, No. 2, Kamrup in Title Suit

No. 323/2012.

3. The learned counsel for the applicant has submitted that the applicant has preferred the connected regular first appeal impugning the judgment and decree dated 02.08.2019 passed in Title Suit No. 323/2012 by learned Civil Judge No. 2, Kamrup (M).

4. The main contentions of the applicant praying for allowing the condonation of delay is that though the judgment was pronounced on 02.08.2019 and though the period of limitation for filing the connected appeal extended upto 01.11.2019, however, the applicant No.2, namely, Sri Shanti Kumar Jalan, who is the Managing Director of the applicant No. 1 felt ill as he suffered from viral hepatitis (Type A) and was advised complete bed rest from 02.11.2019 to 02.12.2019.

5. The learned counsel for the applicants has submitted that after recovering from the ailment on 02.12.2019, the applicant No. 2, immediately consulted the counsel who represented the applicant before the Trial Court, however, the applicant for preferring the connected regular first appeal engaged a different set of lawyers and could brief the newly engaged set of lawyers on 7th December, 2019 only and thereafter on 9th December, 2019 the connected first appeal was filed.

6. It is submitted by the learned counsel for the applicants that the applicant was prevented from genuine cause for approaching this Court for filing the connected regular second appeal and there was no laches or negligence on the part of the applicants and therefore, prays for condoning the delay of 34 days in preferring the connected regular second appeal.

7. On the other hand, Ms. N.C. Das, learned Senior Counsel, assisted by Ms. J. Baishya, representing the respondent No. 2 vehemently opposed the

prayer for condoning the delay of 34 days in preferring the connected regular first appeal by the applicants.

8. The learned Senior Counsel has submitted that the averments made in the application would itself show that there was laches and negligence on the part of the applicant which do not deserve a favourable consideration by this Court.

9. It is submitted by the learned Senior Counsel for the respondents that the delay caused by the applicant is willful and intentional and the applicants have failed to show sufficient cause, which is required for condoning the delay in such cases.

10. It is also submitted by the learned Senior Counsel for the respondent No. 2 that the applicants received the certified copy of the impugned judgment and decree on 17.08.2019 and they suffered from and as per admission of the applicant No. 2, he suffered from ailment only on 02.11.2019.

11. The learned Senior Counsel for the respondent No. 2 submits that the applicant has not explained what prevented the applicants from preferring this appeal after 17.08.2019 till 02.11.2019 when he reportedly felt ill.

12. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record.

13. It appears from record that the prescribed period within which the applicants should have filed the connected appeal was upto 01.11.2019, i.e. 90th day of the date of passing of the impugned judgment and decree. Though the certified copy of the impugned judgment was available with the applicant No. 2, their own submissions on 17.08.2019, however the applicants had time till 01.11.2019 for filing the connected regular first appeal.

14. In an application under Section 5 of the Limitation Act, 1963 praying for

condonation of delay the applicant is required to explain the cause of delay from the date when the prescribed period for filing connected appeal expires. That means, in the instant case, the applicant is required to explain the delay on and from 01.11.2019 only and not before that. On perusal of the records, it appears that the applicants have stated in paragraph No. 3 of the condonation of delay application that the applicants were prevented from not preferring the connected appeal as the Managing Director of the applicant No. 1, i.e. the applicant No. 2 suffered from jaundice (viral hepatitis) from 02.11.2019 and he was in bed rest till 02.12.2019. The said contentions of the applicants is supported by the medical documents annexed along with the delay condonation petition, which is issued by the registered Medical Practitioner namely, Dr. M.K. Keshan.

15. It also appears that the applicant has explained the delay during 2nd December, till 9th of December, 2019 in paragraph No. 4 of the condonation of delay application.

16. Considering the facts and circumstances of this case, this Court intent to take a liberal and justice oriented approach in this case and this Court is of the considered opinion that the applicants have sufficiently explained the delay caused by the applicants in preferring the connected appeal in paragraph No. 3 and paragraph No. 4 of the delay application.

17. In view of the above, the delay of 34 days (as calculated by the Registry of this Court, committed by the applicants in preferring the connected regular first appeal is hereby condoned and this Interlocutory Application is allowed.

18. The Registry is directed to register the connected regular first appeal and list it before this Court again after a period of 1 (one) week, from the date

of this order.

JUDGE

Comparing Assistant