

GAHC030000452024



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

Case No. : I.A.(Civil)/12/2024

Smt. Esther Lalramliani
D/o Vanlalmawii
R/o Lengpui Vengthar
Aizawl, Mizoram

VERSUS

Shri Lalthuamluaia
S/o Lalsangluaia (L)
R/o Chanmari West
Aizawl, Mizoram

Advocate for the Petitioner : Mr. Lalfakawma

Advocate for the Respondent : Mr. S. Vanlalhriata

Linked Case : RFA/3/2024

Smt. Esther Lalramliani
D/o Vanlalmawii
R/o Lengpui Vengthar
Aizawl District
Mizoram

VERSUS

Sh. Lalthuamluaia
S/o Lalsangluaia(L)
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Aizawl
Mizoram

Advocate for the Petitioner : Mr. Lalfakawma
Advocate for the Respondent : Mr. S. Vanlalhriata

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

21.10.2024

Heard Mr. Lalfakawma, learned counsel for the applicant and also Mr. S Vanlalhriata, learned counsel for the respondent. By filing this application, the applicant seeks condonation of 525 days delay in filing the connected Regular First Appeal against the Order dated 01.06.2022 passed by the Court of Senior Civil Judge-IV, Aizawl in Heirship Certificate Application No. 1156/2022.

[2.] Mr. Lalfakawma, learned counsel submits that Heirship Certificate Application No. 1156/2022 was filed on 01.06.2022 seeking Heirship Certificate on the property in question and the same was disposed of on the same day, without issuance of any notice. The applicant, upon coming to learn about the same filed Review Application No. 40/2022, which however was withdrawn on 15.11.2022. The applicant thereafter filed RFA No. 21/2022 before the Lower Appellate Court but the same was dismissed on 10.07.2023 for want of pecuniary jurisdiction by the Lower First Appellate Court. The applicant was

unaware about the dismissal of the Regular First Appeal and only came to know about the same when a legal notice was served upon her on 24.11.2023 by the learned counsel for the respondent. The applicant, thereafter, approached her counsel and she was handed over the case brief on 12.12.2023. The applicant then engaged the present counsel by handing over the brief on 19.01.2024 who then prepared the appeal to be filed and was able to file the same on 07.02.2024.

[3.] The learned counsel submits that the applicant all along was under the impression that her interest was being taken care of by her appointed counsel but when a legal notice was served to her on 24.11.2023 for vacating the property in question, it was only then that she realized that the appeal had been dismissed. The learned counsel submits that due to the fault of the engaged counsel, the applicant should not be made to suffer. Secondly, as the applicant was pursuing the case before the Lower Appellate Court, the benefit of Section 14 of the Limitation Act, 1963 should be given to her. The learned counsel also submits that the applicant also has good grounds of appeal on merit and therefore even for this reason, the delay may be condoned. The learned counsel, in support of his submission, has relied upon the case of *Purni Devi & Ors. vs. Babu Ram & Ors.* rendered by the Apex Court vide Judgment dated

02.04.2024 in SLP(C) No. 17665/2018. He thus submits that the applicant seeking the condonation of delay in filing the connected appeal may be allowed.

[4.] Mr. S Vanlalhriata, learned counsel for the respondent, on the other hand, submits that the applicant has made wrong statements about filing of the review petition before filing the Regular First Appeal before the Court below. He submits that RFA No. 21/2022 was filed on 17.08.2022, whereas the review petition was filed on 13.09.2022. He submits that because of the incorrect statement, the instant application for condonation of delay should be dismissed. In support of his submission, he relies upon the case of *Pundilk Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project & Anr., (2008) 17 SCC 447*. He further submits that nowhere in the application for condonation of delay has the applicant relied upon Section 14 of the Limitation Act and that it is for the first time that submission in this regard has been made by the learned counsel for the applicant. He submits that the respondent, in fact, had submitted written objection to the application for condonation of delay in filing RFA No. 21/2022 before the Lower Appellate Court clearly stating that the appeal was not maintainable for want of pecuniary jurisdiction by the Lower Appellate Court. However, despite such objection the applicant, as opposite party, failed to take any steps despite knowing that the pecuniary jurisdiction of the Lower Appellate

Court was limited. The appeal was finally dismissed on this ground and therefore, the benefit of Section 14 cannot be availed by the applicant. In support of his submission, he relies upon the case of *Ramji Pandey & Ors. vs. Swaran Kali*, (2010) 14 SCC 492.

[5.] The learned counsel further submits that according to the applicant, brief was handed over to the applicant by her appointed counsel on 12.12.2023 but however, she in turn handed over the said brief to the present counsel only on 19.01.2024. Therefore, there is no explanation about the delay of about the 37 days between the two dates. In absence of any explanation in this regard, the delay should not be condoned. The learned counsel lastly submits that the applicant has not been vigilant in getting the updates about the status of the appeal filed before the Lower Appellate Court. He submits that the Regular First Appeal was filed before the Lower Appellate Court on 17.08.2022 and the appeal was dismissed on 10.07.2023. Apart from the counsel for the applicant having failed to inform the applicant about the dismissal of the appeal, the applicant herself ought to have enquired about the status of the appeal and which, he failed to do so for months together. As such, the applicant having failed to be vigilant right from the time of filing the first appeal before the Lower Appellate Court, the delay in filing the appeal before this Court should not be

condoned and the application should be dismissed.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[7.] The respondent has annexed an abstract from the Register of cases of the Lower Appellate Court which goes to show that the date of filing of the RFA No. 21/2022 was 17.08.2022 and that the date of filing of the Review Application No. 40/2022 was 30.09.2022. It therefore appears that the appeal was filed before the review application. The review application was however withdrawn vide Order dated 15.11.2022. As for the Regular First Appeal, the same was dismissed vide Order dated 10.07.2023 after the withdrawal of the review petition. Reliance has been placed on the case of *Pundilk Jalam Patil (D) by Lrs. (supra)* by the learned counsel for the respondent to show that incorrect statements made in the application seeking condonation of delay itself is sufficient to reject the application, without any further enquiry. The Apex Court in the given facts of that case was of the view that party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning the delay. The respondent beneficiary of acquisition had not initiated any steps whatsoever before the expiry of limitation and that no circumstances were placed before the Court that steps were taken

to file appeals and that it was not possible to file the appeals within time. It was under such circumstance that the appeal filed before the Apex Court was allowed.

[8.] In the present case, the Regular First Appeal was admittedly filed before the review petition on 17.08.2022 and the review application filed on 13.09.2022. The review application came to be withdrawn on 15.11.2022 by seeking liberty to file afresh. Admittedly, no further review petition has been filed thereafter. The contention of the applicant that the review petition was initially filed and thereafter, after its withdrawal the regular appeal had been filed in the considered view of this Court cannot be held to be detrimental to the case of the applicant and importantly the case under reference is not similar on facts with the present case of the applicant. It cannot be said that the applicant in order to get rid of the bar of limitation has purposedly claim to file the review application first. In other words, nothing can be gained by the applicant by stating review application was filed first.

[9.] Further, the applicant no doubt ought to have been vigilant by enquiring about the status of the appeal from her appointed counsel but then, the applicant in the considered view of this Court should not be held accountable for the fault of her counsel for not informing her about the dismissal of the appeal.

It also appears that the Heirship Certificate had been issued on the same day of application without an opportunity given to those who may be interested on property concerned including the present applicant.

[10.] This Court is also of the considered view that the benefit of Section 14 of the Limitation Act as provided by said provision cannot be denied to a party just because the same was claimed or raised only at the time of hearing.

[11.] Therefore, upon due consideration, this Court is inclined to take a liberal view and condone the delay in filing the connected appeal. Accordingly, the delay of 525 days in filing the connected appeal is condoned.

[12.] Interlocutory Application stands disposed of as allowed.

JUDGE

Comparing Assistant