

GAHC030001222023



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

Case No. : CMAppl./1/2023

Kualmawi Bilkhawthlir Farmers 039 Assn., MIP
Kualmawi, Bilkhawthlir

VERSUS

Registrar, Firms and Society, Govt. of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Johny L Tochwawng

Advocate for the Respondent : Ms. Caroline K Lungawipuii

Linked Case : I.A.(Civil)/27/2023

Kualmawi Bilkhawthlir Farmers' Assn.
MIP
Kualmawi
Bilkhawthlir

VERSUS

Registrar
Firms and Society
Govt. of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Johny L Tochwawng

Advocate for the Respondent :

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

Date : --24.10.2024

Heard Mr. Johny L. Tochhawng, learned counsel for the applicant. Also heard Ms. Caroline K. Lungawipuii, learned counsel for the sole respondent

This application under Order 9 Rule 4 of the Code of Civil Procedure, 1908 has been filed by the applicant for restoration of Civil Revision Petition No.15/2012, by order dated 25.09.2013 by this Court.

On perusal of the records, it appears that the Civil Revision Petition No.15/2012 was dismissed for non-prosecution by order dated 25.09.2013.

For the sake of convenience, the said order is quoted herein below:

“25.09.2013

When this matter was called on 05.09.2013, none appeared for the petitioner.

On 16.09.2013, the counsel for the petitioner was also absent. Today also, when this matter is called on, none appears for the petitioner. Accordingly, this petition stands dismissed for non-prosecution.”

Learned counsel for the applicant has submitted that the applicant, which is a society registered under Societies Registration (Extension to Mizoram) Act, 1976 had filed a Revision Petition under Article 227 of the Constitution of India, impugning the order dated 01.07.2010, passed by the learned Additional District Judge, Aizawl in Civil Revision Petition No. 01/2010, before this Court. The said Civil Revision Petition

was registered as CRP No. 15/2012.

Learned counsel for the applicant has submitted that the applicant had engaged Sri S. N. Meitei, Advocate to appear for the applicant in the same Civil Revision Petition.

It is also submitted by learned counsel for the applicant that whenever the said engaged counsel of the applicant was contacted over telephone by the applicant, it was informed by the engaged counsel that the Civil Revision Petition is pending before the High Court and it will take some time for disposal and on getting assurance from the engaged counsel, the petitioner applicant kept waiting for the fate of the Civil Revision Petition filed by him.

It is also submitted by learned counsel for the applicant that in the year 2013, the applicant came to know that the engaged counsel of the petitioner has left Mizoram and thereafter, when the counsel was contacted, the applicant was given assurance that another counsel by the name of Sri Ricky Gurung has been entrusted to pursue the Civil Revision Petition filed by the applicant.

It is also submitted by learned counsel for the applicant that when the said Sri Ricky Gurung was contacted by the applicant, he also informed the applicant regarding the pendency of the Civil Revision Petition and also stated that it will take some time for the said Civil Revision Petition to get disposed by the High Court.

Learned counsel for the applicant has further submitted that when nothing was informed by the engaged counsel regarding the fate of the Civil Revision Petition filed by the petitioner, President of the Petitioner Society came to Aizawl in the year 2023 and thereafter, he came to know that the Civil Revision Petition has been dismissed for default as no counsel was present on consecutive occasions when the matter was called up for hearing before the Court.

Learned counsel for the applicant has submitted that the Petitioner Society trusted the engaged counsel and it was not at fault and he came to know about the

dismissal of the Civil Revision Petition for default only on 13.01.2023.

Learned counsel for the applicant has also submitted that there was a delay in filing the instant application under Order 9 Rule 4, however, the said delay was condoned by this Court by Order dated 22.07.2024, passed in I.A. (C) No. 27 of 2023.

Though the sole respondent has filed a written objection against the restoration application filed by the applicant, however, in the written objection filed by the respondent, the only plea taken by the respondent is that the Petitioner Society is no longer in existence since the year 2007.

However, nothing has been stated as regards the plea taken by the applicant in the restoration petition regarding the cause shown by the applicant for defaulting to appear before the Court in Civil Revision Petition No.15/2012 was called on.

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

Though, the submissions made by the counsel for the applicant shows that the engaged counsel for the applicant was at fault in not performing his professional duty in the appearing before the Court when the matter was called on for hearing and though, no formal complaint has been lodged against the said counsel as the counsel has already left Mizoram. However, as the averments made by the applicant are supported by affidavit, this Court finds the cause shown by the applicant for defaulting to appear before the Court when the said Civil Revision Petition was dismissed for default to be sufficient cause within the meaning of Order 9 Rule 4 of the Code of Civil Procedure, 1908 and therefore, this Court is inclined to set aside the impugned order dated 25.09.2013 passed in CRP No. 15/2012.

The impugned order is therefore, set aside and the Civil Revision Petition No. 15/2012 is restored.

Registry to list the Civil Revision Petition after restoration after a week on date

to be fixed by the Registry.

This CM Application is accordingly disposed of.

JUDGE

Comparing Assistant