

GAHC030001342024



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

Case No. : I.A.(Civil)/45/2024

Lalnunmawia
S/o Lalhluna (L), R/o Bungkawn, Aizawl, Mizoram

VERSUS

Sh H.Saichhinga and 6 Ors.
S/o Biakkunga (L), R/o Serchhip, Mizoram

Advocate for the Petitioner : Mr. Lalbiaknunga Hnamte

Advocate for the Respondent :

Linked Case : FAO/2/2024

Sh. Lalnunmawia
S/o Lalhluna (L)
R/o Bungkawn
Aizawl
Mizoram

VERSUS

Sh. H. Saichhinga and 6 Ors.
S/o Biakkunga (L)
R/o Serchhip
Mizoram

2:Sh. Lalrinliana
S/o Lalbela (L)

R/o Serchhip
Mizoram

3:Sh. David Rothangpuia
S/o Aithuama
R/o Serchhip
Mizoram

4:Sh. Biakmawia
S/o Denga
R/o Hualtu
Mizoram

5:Sh. B.Lalbiakluanga
S/o Pi Thauvi
R/o Serchhip

6:Sh.Thara @ Tlansanga
S/o Zahnuna
R/o Hualtu
Mizoram

7:Sh. Saikhuma r/b Saichhinga
S/o Lianzinga
R/o Chhingchhip
Mizoram

Advocate for the Petitioner : Mr. Lalbiaknunga Hnamte
Advocate for the Respondent : Lalbiakthuama

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

30.09.2024

Heard Mr. Lalbiaknunga Hnamte, learned counsel for the applicant and Mr. P.C Lalthangmaia, learned counsel for the respondents.

[2.] By filing this application, the applicant seeks condonation of 64 days delay in filing the connected FAO No. 2/2024. The FAO No. 2/2024 is an appeal against the Order dated 27.09.2023 passed in CMA No. 238/2019 by the Court

of Civil Judge, Senior Division-II, Aizawl dismissing the application filed by the instant application under Order 9, Rule 13 CPC for setting aside *ex parte* order dated 23.08.2018 passed in CMA No. 221/2018 arising out of Execution Case No. 1/2018.

[3.] The learned counsel for the applicant submits that the applicant has not been keeping good health for a long time which has resulted in the delay in filing the connected FAO. He submits that the applicant was suffering from high blood pressure, giddiness, vomiting, etc. Due to his health condition, he was taken to the hospital on 01.11.2023 where he was examined and given some medicines. Since the applicant did not feel better, he was again taken to the hospital on 01.12.2023, wherein it was found that his blood pressure was still quite high. After taking the medicine which was prescribed to him, the applicant subsequently could contact his lawyer and file the connected FAO on 28.02.2024. However, by that time there was a delay of 64 days in filing the FAO and therefore, the instant application seeking condonation of delay.

[4.] The learned counsel submits that there is no *laches* on the part of the applicant in not filing the connected appeal on time and that it was due to his poor health condition and for reasons beyond his control. In support of his submission, the learned counsel has referred to the pleadings made in paragraph No. 4 of the application, wherein an explanation has been made for the delay. The learned counsel has also relied upon the case of *State of Nagaland vs. Lipok Ao & Ors.*, (2005) 3 SCC 752 and Order dated 21.08.2019 passed by a Co-ordinate Bench of this Court in CMA No. 9/2019 in connection with Review Pet. No. 7/2019.

[5.] Mr. P.C Lalthangmawia, learned counsel for the respondents, on the other

hand, submits that the applicant has failed to make the explanation as to what transpired before the medical examination of the petitioner on 01.11.2023 after the Order dated 29.09.2023 was passed by the learned Court below. The applicant has also failed to mention what transpired between 01.11.2023 and 02.12.2023 when the second examination of the applicant was done in the hospital. He submits that in fact, both the documents are only OPD cards which otherwise does not contain any opinion or follow up treatment to be done. He submits that the prescriptions given are basically medicines to be orally taken and the applicant was not required to be admitted in the hospital as well. After 02.12.2023, there is no further explanation as to what happened to the applicant except for stating that a certified copy of the Order dated 27.09.2023 and 23.08.2018 passed by the Court below were obtained on 22.02.2024 and 19.01.2024 respectively. He submits that under the circumstance, the delay of 64 days 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 explanation made by the applicant for the delay is found in paragraph No. 4 of the application which may be abstracted hereunder:-

“That, the bona fide reasons for causing delay in preferring the accompanying FAO petition are as follows:-

(i) The instant applicant/appellant is suffering from chronic hypertension and dyslipidemia and he is on and off medical treatment. Hence, the appeal could not be filed within the prescribed period.

Photo copy of Medical Certificates of the applicant dated 01.11.2023 and dated

02.12.2023 are annexed hereto and marked as ANNEXURE-I & II.

(ii) That the applicant/appellant was in consultation with his engaged counsels. Counsels for the applicant took some time to collect necessary documents and also applied for Certified Copy and the same was issued on 19.01.2024.

(iii) That thereafter the Ld. Counsel for the applicant/appellant took some time in preparing and drafting the accompanying Appeal.

(iv) That however since there is want of necessary documents, the counsel for the applicant filed another application for obtaining copy of CMA No. 221 of 2018. On 21.02.2024 and the same was issued on the same day i.e. 21.02.2024.

(v) That upon considering the above stated chains of events, appeal could not be filed within a period of limitation due to all unavoidable circumstances cited above. Moreover, if so the delay is not condoned, the wrong committed by the learned Lower Court may survive for eternity. Moreover, hearing the merit of the case is needed for proper adjudication. As such, this Hon'ble Court interfering to redress the same is badly needed for the interest of justice.

(vi) The accompanying FAO was ready to be filed only on 28.02.2024. Hence, a delay of filing an appeal for 64 days (including all holidays) had occurred in filing the accompanying appeal."

[8.] From the above abstract, it may be seen that although the order sought to be challenged is dated 27.09.2023 passed in CMA No. 238/2019, the explanation for the delay only starts from 01.11.2023 when the applicant was said to have been taken to the hospital for his check up. It may be seen that more than 1 (one) month had passed between 27.09.2023 to 01.11.2023. After the applicant got his prescription on 01.11.2023, he is said to have gone to the

hospital again on 02.12.2023. However, there are no explanations as to what transpired between the two dates except for the learned counsel for the applicant has orally submitted that the applicant did not feel better and that his blood pressure was still very high.

[9.] It may further be seen that although the order sought to be impugned was passed by the Court below on 27.09.2023, the applicant applied for a certified copy of the same only on 18.01.2024 after the expiry of the period of limitation for filing of the appeal. Copy of the order was furnished to him the next date i.e. 19.01.2024. Similarly, a certified copy of the Order dated 23.08.2018 passed in CMA No. 221/2018 was again applied on 21.02.2024 only and which again was issued on the same day itself. Reliance has been placed upon the case of *State of Nagaland vs. Lipok Ao & Ors. (supra)*, passed by the Apex Court. However, on perusal of the same, it is seen that the Apex Court in the given facts of that case was of the view that the State cannot be put on the same footing as an individual in view of the fact that an individual will always be quick in taking the decision whether he will pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants and therefore, some consideration should be given for this reason. The applicant in the instant case is not a State but an individual who as observed by the Apex Court should have been quick in taking a decision to pursue the legal remedy available to him. Therefore the case relied upon is found to be not applicable to the case of the applicant.

[10.] The applicant has also relied upon the Order dated 21.08.2019 passed by a Co-ordinate Bench of this Court in CMA No. 9/2019. However, a perusal of the

same also would go to show that the same cannot be applicable to the instant case in view of the fact that delay in that case was condoned as the Court found that the judgment & order sought to be reviewed was passed on the wrong premise that the petitioners in the writ petition had retired from Government servant on 31.01.2018, while the pleadings in the writ petition was to the effect that they had retired between 01.01.2006 to 27.10.2010. Therefore, the Court took the view that the date and order of the retirement of the writ petitioners was having a bearing with regard to the revision of pay of 2010 and therefore condoned the delay. This Court therefore does find the same to be applicable to the present case.

[11.] Thus, upon due consideration, this Court does not find any ground to condone the delay. Accordingly, the application for condonation of delay of 64 days is rejected.

[12.] I.A stands disposed of.

JUDGE

Comparing Assistant