

GAHC030002772024



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

Case No. : I.A.(Civil)/80/2024

Vanlalchhantluanga
S/o F.Malsawmdawngliana (L), R/o 7th Day Tlang, Aizawl, Mizoram

VERSUS

Sh F.Vanlalnuntluanga
S/o Vanhnuaithanga (L), R/o Nursery Veng, Aizawl, Mizoram

Advocate for the Petitioner : Ms. Lalawmpuii Fanai

Advocate for the Respondent :

Linked Case : CRP/5/2024

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Mizoram

Advocate for the Petitioner : Ms. Lalawmpuii Fanai
Advocate for the Respondent : Mr. Zodinpuia Hnamte

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

03.09.2024

Heard Ms. Lalawmpuii Fanai, learned counsel for the applicant. Also heard Mr. Zodinpuia Hnamte, learned counsel for the respondent.

2. This is an application under Section 5 of the Limitation Act, 1963 for condoning the delay of 61 days in filing the accompanying Civil Revision Petition for setting aside the impugned Order dated 29.11.2023 passed by the learned Senior Civil Judge-III, Aizawl District Aizawl in Review Application No. 35/2022 arising out of Heirship Certificate No. 2230/2019.

3. Ms. Lalawmpuii Fanai, learned counsel for the applicant submits that there was no intentional or wilful negligence on the part of the applicant in filing the accompanying Civil Revision Petition and the delay was due to inadvertence and procedural grounds and therefore, beyond the control of the applicant.

4. Per contra, Mr. Zodinpuia Hnamte, learned counsel for the respondent submits that no reasonable explanation has been tendered by the applicant in support of the prayer for condonation.

5. In support of his submission, he places reliance on the different decisions of the Apex Court in the case of:

(i) ***Pundlik Jalam Patil (Dead) By Lrs Vs. Executive Engineer,***

Jalgaon Medium Project & Another, (2008) 17 SCC 448.

(ii) Pathapati Subba Reddy (Died) By LRs & Others Vs. Special Deputy Collector (LA), (2024) SCC Online SC 513.

6. I have given my prudent consideration to the amendment advanced by the learned counsels appearing for both the parties and have perused the averments made in the Interlocutory Application in support of the condonation prayer as well as the objection filed by the respondent on 14.08.2024 and the citations submitted by both sides at the bar.

7. Para 2 (i) to (v) is reproduced hereunder for ready reference:-

“2. That due to bonafide but inadvertent reasons the Civil Revision Petition is being filed beyond the period of limitation prescribed by law as explained herein below:

(i) That a delay of days 71 had occurred from the date of Order dt.29.11.2023 i.e. between 29.11.2023 to 08.02.2024 because the Applicant had approached the present counsel to appear and to act on his behalf by filing Civil Revision Petition and the present counsel applied for a Certified True Copy of Order dt.29.11.2023 and the same was issued on dt.08.02.2024.

A Copy of Certified True Copy of Order dt.29.11.2023 is annexed hereto and is marked as Annexure- I.

(ii) That a delay of 41 days had occurred i.e., between 09.02.2024 to 20.03.2024 because the counsel for the applicant had studied the case and prepared for filing the Civil Revision Petition and applied for another Certified True Copy of Heirship Certificate No.757 of 2019 and the same was issued on dt.20.03.2024.

A Copy of Certified True Copy of Order dt.09.09.2019 is annexed hereto and is marked as Annexure- II.

(iii) That a delay of 18 days had occurred i.e., between 21.03.2024 to 7.04.2024 because the counsel for the applicant had prepared for filing the Civil Revision Petition such as drafting and for finalizing the Civil Revision Petition.

(iv) That a delay of 21 days had occurred i.e., between 8.04.2024 to 28.04.2024 because the Civil Revision Petition was rejected by the registry due to some technical defects was found and for making corrections as such 151 days had gone unintentionally from the date of Order dt.29.11.2023.

(v) That as the above-mentioned reasons a delay of 61 days has occasioned."

8. Paragraphs 7 and 8 of the objection filed by the respondent is also reproduced hereunder for ready reference:-

"7. That with regard to the statements made in paragraph No. 3 & 4, I say that the explanation for the delay according to the Applicant is on account of certain personal problems faced by the appointed Counsel and the reasons so cited has not been substantiated in the application. Further, the Applicant has not given due diligence in the instant case and the reasons and grounds given by the Applicant is merely an excuse. Thus, the applicant failed to give a reasonable ground for condoning the delay of 61 days in filing the instant Civil Revision Petition. No just reason is made out for condoning the delay. It is well settled that each day delay has to be explained. In the instant application no proper explanation in this regard has been given.

8. That the Applicant has nowhere shown any sufficient cause for condoning the inordinate delay of 61 days in filing the connected Civil Revision Petition. It is also pertinent to mention that as per Section 115 of the CPC a revision petition can be entertained only on the ground that the subordinate Court concerned had exercise jurisdiction not vested in it by law or failed to exercise the jurisdiction vested in it or the subordinate Court has acted in exercise of its jurisdiction illegally or with material irregularity. However, no such illegality or irregularity were committed by the subordinate court. As such, the delay of 61 days may not be condoned and the Revision Petition may be dismissed."

9. Apparent from the reading of the aforesaid paragraphs that the delay of 61 days which occurred for filing the accompanying revision petition is due to the time that was taken by the engaged counsel firstly in obtaining the certified copy of the requisite order and for studying the brief thereof. The aforesaid reasons cannot be said to be unreasonable and insufficient.

10. Though the learned counsel appearing for the respondent projected that the applicant has not given due diligence in the instant case and the reasons and grounds given by the applicant is merely an excuse, the same cannot be accepted by this Court in the context of the present case.

11. The applicant having engaged a counsel to do the needful has taken all the requisite steps that a litigant could have taken. The delay primarily occurred because of the time taken by the engaged counsel and therefore, this Court in view of the law laid down by the Apex Court in a catena of decisions including the decisions cited by the respondent, chooses to exercise the power of discretion in favour of the applicant.

12. Reference is made to the case of ***N. Balakrishnan Vs. M. Krishnamurthy*** reported in ***(1998) 7 SCC 123***. The relevant paragraph Nos. 9 to 12 is reproduced hereunder for ready reference:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered.

Time is precious and the wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. *A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]."*

13. In view of the above, this Court is satisfied that the explanation tendered are sufficient and bonafide and therefore, in the interest of justice, the delay of 61 days in filing the accompanying revision petition stands condoned.

14. The IA stands allowed.

Disposed of.

JUDGE

Comparing Assistant