

GAHC030003812024



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

Case No. : I.A.(Civil)/101/2024

Sh. Malsawmtluanga
S/o Sangthuama (L), R/o Tlangnuam, Aizawl

VERSUS

Smt. Lalremzuali
D/o Sangthuama (L), R/o Tlangnuam, Aizawl

Advocate for the Petitioner : Mr F Lalenglina

Advocate for the Respondent : Ms Dinari T Azyu

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

JUDGMENT & ORDER (ORAL)

19.11.2024

Heard Mr. F Lalenglina, learned counsel for the applicant and Mr. Victor L Ralte, learned counsel for the sole respondents.

[2.] By filing this application, the applicant seeks condonation of 88 days in filing the connected Regular First Appeal against the Order dated 11.12.2023

passed by the Court of Civil Judge, Senior Division-III, Aizawl District, Aizawl in Probate Application No. 28/2023 whereby, the Will dated 09.12.2020 executed by Sh. Sangthuama was probated in favour of the respondent.

[3.] Be it stated herein that the applicant and the respondent are siblings and that late Sh. Sangthuama is their father who is said to have left behind the properties in question in favour of the respondent through the said Will.

[4.] It is the case of the applicant that after Sh. Sangthuama expired, he came to know about the probating of the Will dated 09.12.2020 vide Order dated 11.12.2023 only on 05.02.2024. He then immediately applied for a certified copy of the order on the same day. The applicant also came to learn about the Order dated 13.02.2024 passed by the Settlement Officer, Land Revenue & Settlement, directing the applicant to surrender the house pass to the Revenue Authority concerned.

[5.] The applicant, against the order passed by the Settlement Officer dated 13.02.2024 filed Civil Suit No. 24/2024 and at the same time, made preparation for challenging the Order dated 11.12.2023 passed in Probate Appln. No. 28/2023 before the High Court by applying for all the connected documents in connection with the probate application before the Registry of the District Court. After collecting all the required documents, the applicant was able

to file the connected Regular First Appeal and the instant application only on 10.06.2024. By that time, a delay of 88 days had occurred and therefore, the instant application is filed seeking condonation of the delay.

[6.] Mr. F Lalengliana, learned counsel for the applicant submits that the applicant came to know about the order passed in the probate application only on 05.02.2024 and immediately applied for a certified copy of the same. As the Settlement Officer had passed an Order dated 11.12.2023 directing the applicant to handover the House Pass to the Revenue Authorities, the applicant filed Civil Suit No. 24/2024 and at the same time, made preparation for filing an appeal before the High Court against the order passed in probate application. Since the applicant did not have all the required documents, he applied for the same before the Registry of the District Court, which therefore has resulted in the delay of 88 days in filing the connected appeal. He submits that the delay is unintentionally and due to bona fide reasons and therefore, the same may be condoned. He also submits that the applicant has no other remedy against the order passed in the probate application and therefore, Court may condone the delay. He further submits that the applicant has been looking after the land covered by the House Pass by using the same as a garden for cultivating, vegetable, etc. In other words, the learned counsel submits that even on merit,

the applicant has a good case and for which reason as well, the delay may be condoned. In support of his submission, the learned counsel has relied upon the following authorities:-

(1) Sridevi Datla vs. Union of India & Ors. (2021) 5 SCC 321.

(2) State of Nagaland vs. Lipok Ao & Ors. (2005) 3 SCC 752.

[7.] Mr. Victor L Ralte, learned counsel for the respondent, on the other hand, submits that it is clear from the order passed by the Settlement Officer, Land Revenue & Settlement Department on 13.12.2024 that the applicant was indeed aware about the order passed in the probate application. The applicant, therefore, has not come before this Court with clean hands by stating that he came to know about the order passed in the probate application only on 05.02.2024 and that too without substantiating the same in any manner.

[8.] The learned counsel further submits that the order passed in the probate application was preceded by a notice issued in the Local Daily giving opportunity to any interested person to have a say in the application for probate submitted by the respondent. However, within the time given, no one made any objection or appeared before the Court. Whereas, the respondent on her part produced three witnesses who were the signatories to the Will, apart from producing her mother as well. It was only then that the probate Court had

granted probate of the said Will. The learned counsel also submits that the respondent had looked after her father during his lifetime alongwith her mother whereas the applicant had moved out from the house. Therefore, the applicant even otherwise cannot have any claim to the property left behind by her late father even otherwise.

[9.] The learned counsel further submits that even assuming without admitting that the applicant was not aware about the order passed in the probate application as on 18.01.2024, but the fact remains that he was aware about the same when the Order dated 13.02.2024 was passed by the Settlement Officer, Land Revenue Department. Despite the same, the applicant failed to file an appeal soon after. As such, there is no basis on the stand taken by the applicant that the delay in filing the connected appeal is unintentionally and for genuine reasons. He submits that the explanation given by the applicant for condoning the delay of 88 days is far from being satisfactory since he has failed to mention on which date he had applied for copies of the connected documents in respect of the Probate Appln. No. 28/2023. He, therefore, submits that the applicant has failed to demonstrate any bona fides in filing the connected appeal beyond the period of limitation but by not only failing to give reasonable explanation but also by not coming to the Court with clean hands.

As such, the delay of 88 days may not be condoned and the application should be dismissed. In support of his submission, the learned counsel has relied upon the following authorities:-

(1) Kishore Samrite vs. State of Uttar Pradesh & Ors. (2013) 2 SCC 398 and

(2) Basawaraj & Anr. vs. Special Land Acquisition Officer, (2013) 14 SCC 81.

[10.] I have heard the submissions made by the learned counsels and I have perused the materials available on record including the authorities relied upon by them.

[11.] By filing this application, the applicant seeks condonation of 88 days in filing the connected Regular First Appeal. Office Note dated 11.06.2024 indicates that as per the calculation made by the Registry, the delay is 90 days and not 88 days. In order to appreciate the explanation given by the applicant for the delay, paragraph No. 3 of the application which is relevant may be abstracted hereunder:

“That the present Applicant acquired the knowledge about issuance of the impugned order dt. 11.12.2023 on dt. 05.02.2024 wherein certified copy of the impugned order was applied to the registry of the District Court on the same day. Accordingly, the Applicant had acquired the knowledge that the impugned order dt. 13.02.2024 was also passed by the Settlement Officer, Land Revenue & Settlement Department, Aizawl District with a direction to the present Applicant to surrender his House

Pass to the concerned authority of Land Revenue & Settlement. After this, the Counsel representing the Applicant had preferred Civil Suit No. 24/2024 challenging the impugned order dt. 13.02.2024 stating inter-alia that the plaintiff is to prefer an appeal against the impugned order dt. 11.12.2023 in Probate Application No. 28/2023 before the Hon'ble High Court. After the Civil Suit was filed by the present Applicant, the Counsel representing the present Applicant is busy with taking necessary steps for preferring an appeal petition. Here, as the Counsel for the Applicant is busy with taking necessary steps for preferring an appeal petition. Here, as the Counsel for the Applicant had sought for a copy of all the connected document in connection with Probate Application No. 28/2023, the same was applied to the concerned authority of the registry of the District Court. After the said documents were applied and processed, the Counsel had taken time for drafting the appeal petition. During the said period, the present Applicant had suffered a delay of 88 days.

[12.] From the above abstract, it may be seen that according to the applicant, he has come to learn about the order passed in the probate application on 05.02.2024. The applicant has, however, not substantiated as to how he came to learn about the order passed in the probate application. According to the respondent, the applicant was aware about the order passed in probate application as on 18.01.2024 where a discussion was held before the Revenue Court presided over by the Settlement Officer, Land Revenue & Settlement Department. A perusal of the order passed by the Settlement Officer

on 13.02.2024 although does not disclose the fact that the applicant was aware about the order passed in the probate application but the fact remains that the said Order dated 13.02.2024 provides that as the parties were unwilling to settle the dispute between themselves, it was decided by the Settlement Officer that the dispute be solved as per the Will already projected by the Civil Court. Against the Order dated 13.02.2024 passed by the Settlement Officer, the applicant filed Civil Suit No. 24/2024 and the same was admitted and summons issued to the defendant concerned vide Order dated 11.03.2024. However, it transpired that the suit was subsequently disposed of by the Civil Judge, vide Order dated 26.07.2024 with an observation that as the plaintiff had approach the Revenue Court which passed the Order dated 13.02.2024, the plaintiff should approach the Appellate Authority as per the relevant provisions of the Mizoram (Land Revenue) Act, 2013.

[13.] It may be noticed that it is not the case of the applicant that he seeks condonation of the delay for having approached the wrong forum. According to the applicant, even as Civil Suit No. 24/2024 was being filed, the applicant was making preparation to file an appeal against the order passed in the probate application. While the Civil Suit could be filed on 11.03.2024, the applicant was unable to file the connected appeal and the reasons cited in the

applications is that a copy of all the connected application in connection with the probate application was being applied for in the Registry of the District Court. The applicant has, however, not disclosed what documents were applied for, when the same was applied for and when the same was handed over to him. The explanation made in paragraph No. 3 of the application as abstracted herein above is therefore very sketchy and not satisfactory.

[14.] Reliance has been placed upon the case of *State of Nagaland vs. Lipok Ao & Ors. (supra)*, more particularly paragraph No. 12 of the said judgment. In paragraph No. 12 of the said judgment, the Apex Court had referred to another case of the same Court namely *O.P Khatpalia vs. Lakhmi Singh & Ors. (1984) 4 SCC 66* where the Court had held that where refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. The expressions "sufficient cause" is adequately elastic to enable the Court to apply the law in a meaningful manner, which sub serves the ends of justice and therefore, a justifiable liberal approach should be adopted. Coming to the present case, it may be seen that the applicant on 18.01.2024 was aware about the order passed in the probate application when the matter was taken up before the Settlement Officer, Land Revenue & Settlement Department. If he was not, he surely would be aware with the

passing of the Order dated 13.02.2024 by the Settlement Officer. Though the applicant soon after filed Civil Suit No. 24/2024 but for reasons not disclosed, he filed the present connected appeal only on 10.06.2024. Having regard to the statements made in paragraph No. 3 of the application, the applicant has only failed to demonstrate that there was sufficient cause which prevented him in not approaching this Court on time.

[15.] Reliance has also been placed to the case of *Sridevi Datla (supra)*, wherein the Apex Court in the given facts of that case held that there is no straight jacket formula prescribed to come to the conclusion as to whether sufficient and good grounds have been made out to condone the delay. The same has to be judged amongst others from the behavior of the litigant who seeks condonation of delay and who should display bona fides and that they should not be any negligence in approaching the Court at the earliest. As already stated herein above, the applicant, besides stating that preparation was being made to prefer an appeal before this Court by applying for all the connected documents before the Lower Court, has not given the minimum particulars to substantiate his stand. Therefore, it only appears that there has been negligence on the part of the applicant in not approaching this Court soon after he came to learn about the impugned order on 05.02.2024.

[16.] The Apex Court in *Basawaraj & Anr. (supra)* held that it is the duty of the Courts to exercise its powers judiciously based on the facts and circumstances of each case and that “sufficient cause” cannot be liberally interpreted if negligence, inaction, or lack of bona fides is attributable to the party concerned. Even though limitation may harshly affect the rights of the party but it has to be applied with all its rigour prescribed by the statute. Courts do not have the power to extend the period of limitation on imputable grounds. Paragraph Nos. 12, 13 & 15 of the said judgment is abstracted below for ready perusal:-

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been

agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266.

‘605. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence’.

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

*15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters **laid down by** this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.*

[17.] Therefore, upon due consideration, this Court is not persuaded to condone the delay and accordingly, the application is rejected and dismissed.

JUDGE

Comparing Assistant