

GAHC030005282023



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

Case No. : I.A.(Civil)/122/2023

Sh. Thanhkira Hauva
G-33, Chanmari
Aizawl, Mizoram

VERSUS

State Bank of India Regional Business through the Asst. Gen. Manager and Anr.
Babutlang, Aizawl 2:State Bank of India
Special Personal Banking Branch through the Asst. Branch Manage

Advocate for the Petitioner : Mr Lalfakawma

Advocate for the Respondent : Mr. C Malsawmtluanga

Linked Case : Review.Pet./3/2023

Sh. Thanhkira Hauva
G-33
Chanmari
Aizawl
Mizoram

VERSUS

State Bank of India Regional Business Office Through the Assistant Gen.Manager and
Anr.
Babutlang
Aizawl

2:State Bank of India
Special Personal Banking Branch through the Asst. Branch Manager
Zarkawt
Aizawl.

Advocate for the Petitioner : Mr Lalfakawma
Advocate for the Respondent : Mr. C Malsawmtluanga for R1 & R2

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

13.08.2024

Heard Mr. T. Lalzekima, learned counsel for the applicant/petitioner along with Mr. Zodinpuia Hnamte, learned counsel for the respondents.

The instant application is filed under Section 5 of the Limitation Act, 1963, read with Section 151 of the Code of Civil Procedure for condonation of delay of 167 days, as on 19.09.2023, in filing a review petition of the Judgment dated 03.10.2023 passed by this Court in RFA No.14 of 2022.

The learned counsel for the applicant/petitioner submits that the delay of 167 days in filing the review petition is unintentional and was caused due to the fact that the applicant/petitioner is a cancer patient who needs a lot of physical and medical care and observation. That the applicant/petitioner had gone to Kolkata for follow-up medical treatment in the month of March, 2023, and was admitted at Apollo Hospitals, Kolkata to take different kinds of test. Thereafter, in the month of September, 2023 the applicant/petitioner was again admitted at Apollo Hospitals, Kolkata to take different kinds of test. That the applicant/petitioner was in and out of the hospital several times and was in no condition to discuss the matter with his counsel. Therefore, the counsel having

to obtain instructions from the applicant/petitioner took time in drafting the review petition which resulted in a delay of 167 days.

In support of his submission, the learned counsel has enclosed the results of the blood test of the applicant/petitioner dated 20th March, 2023 issued by the Apollo Hospitals, Kolkata and blood test result dated 11th September, 2023 also issued by the Apollo Hospital, Kolkata. The learned counsel has also filed an additional affidavit to bring on record a medical certificate issued by the Doctor of Apollo Hospitals.

The learned counsel further submits that there are sufficient grounds for review of the Judgment of this court in RFA No.14 of 2022 dated 03.10.2023, since this court had failed to mention the interest against the amount payable to the instant applicant/petitioner and further has not imposed any cost on the respondents.

The learned counsel for the applicant/petitioner has placed reliance on the Judgment of the Apex Court in **State of Nagaland Vs. Lipok AO and ors.** reported in **(2005) 3 SCC 752 paras 7 & 8.**

Mr. Zodinpuia Hnamte, learned counsel for the respondents on the other hand submits that the reason for the delay of 167 days in filing the instant review petition has not been properly explained. He submits that a perusal of the medical documents submitted only show that the applicant/petitioner had undergone some blood test at Apollo Hospitals, Kolkata during the month of March, 2023 and September 2023, the result of the blood tests do not indicate any serious ailment, since it is seen that most of the tests result are within the normal range. The learned counsel submits that no explanation has been made as to why the applicant/petitioner did not filed the review petition between

March 2023 and September,2023.

He further submits that the medical certificate enclosed in the additional affidavit does not show the present condition of the applicant/petitioner. It does not indicate that the applicant/petitioner is bed-ridden and that he is not in a position to have consultation with his learned counsel. He therefore submits that no sufficient ground has been made out for the said delay of 167 days in filing the review petition against the Judgment of this court in RFA 14 of 2022 dated 03.10.2023 passed by this Court.

Having heard the submissions made by the learned counsels for both the parties, this court finds that the only ground taken by the learned counsel for the applicant/petitioner, for the delay in filing the condonation application for 167 days in filing the connected Review Petition is due to the medical condition of the applicant/petitioner. To prove the medical condition of the applicant/petitioner, the learned counsel has annexed certain documents in his condonation application.

On perusal of the documents submitted, it is seen that the applicant/petitioner had undergone blood test at Apollo Hospitals, Kolkata on 20th March, 2023 and 11th September 2023, this court finds that the medical documents/blood tests result do not indicate any serious ailment since the results all appear paid to be within the normal range, which can be understood even by a non medical person. There is no document showing that the applicant/petitioner was admitted in the Hospital for these blood test.

The additional affidavit filed by the applicant/petitioner, has annexed a document/medical certificate wherein Dr. Amit Dutt Dwary, Consultant, Oncology (Medical) Apollo Multispecialist, Hospitals Ltd had addressed as below.

“To whom so ever it may concern dated 08.06.2024

Patient Mr. Thanhkira Hauva, 68 yrs/male is case of Diffuse Large B Cell lymphoma, since May 2017.

He was treated with 6 cycles of R.CHOP Chemo, till 2017, December.

He also is case of DM, CAD.

Currently he is on close surveillance from our side at Apollo Kolkata”.

On perusal of the medical certificate later filed by way of an additional affidavit, the medical certificate does not indicate that the applicant/petitioner is under bed-rest or that he is not in a condition to be consulted by his learned counsel with regards to the instant case.

In view of the above, this court finds that no sufficient cause has been made out for the delay of 167 days in filing the review petition against the Judgment & Order in RFA 14 of 2022 dated 03.10.2023 passed by this Court and accordingly, the I.A.(Civil) 122 of 2023 stands dismissed and disposed of.

JUDGE

Comparing Assistant