

GAHC020004652022



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

Case No. : C. REVN/9/2022

SHRI. SUNNY SHIMRAH
R/O POI VILLAGE, CHINGAI BLOCK,
UKHRUL, MANIPUR

VERSUS

SHRI. WUNGMAYO MUINAO
S/O LT. M. MINGSHIVAM,
R/O WUNGRAM COLONY, DIMAPUR,
NAGALAND

Advocate for the Petitioner : Mr. T. B. JAMIR, Adv.

Advocate for the Respondent : Mr. N. LONGKUMER, Adv.

**BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 05.08.2023

Date of Judgment & Order : 09.08.2023

JUDGMENT & ORDER (CAV)

Heard Mr. T. B. Jamir, learned counsel for the petitioner. Also heard Mr. N. Longkumer, learned counsel for the respondent.

2. This application filed under Section 115 of the Code of Civil Procedure, 1908 *read with* Article 227 of the Constitution of India challenging the impugned order dated 21.07.2022 passed by the Court of learned Civil Judge (Senior Division), Dimapur, Nagaland in I.A. (Civil) No.112/2022 arising out of Civil Suit No.14/2012.

3. The case, in a nutshell, is that the respondent, as plaintiff, filed Civil Suit No. 14/2012 against the petitioner/defendant. The respondent stated that he and his associates organized a concert on 06.05.2012 in Imphal, Manipur. The petitioner was provided tickets for this concert, but, neither, he made payment nor returned the unsold tickets. Furthermore, the petitioner shifted his residence from Imphal. Through this suit, the respondent/plaintiff prayed for the recovery of Rs. 40,05,000/- (Rupees forty lakhs five thousand) only, including an outstanding balance of Rs. 20,00,000/- (Rupees twenty lakhs) only. This sum represents damages for assault and harassment caused to the plaintiff, along with interest at 18% per annum from 01.04.2012, both *pendente lite* and future until the final payment or realization.

4. The suit was filed in the year 2012, but, the petitioner/defendant did not receive any summons or notice, nor did he come across the substituted notice published in the newspaper in Manipur. The petitioner stated that since the mid-part of 2012, he had shifted to New Delhi for business, and thus, he had no information about the institution of Civil Suit No. 14/2012 by the respondent/plaintiff. It was only in early March 2022 that the petitioner/defendant became aware of the pendency of the said civil suit before the court of the learned Civil Judge (Senior Division), Dimapur, Nagaland, where the petitioner was arrayed as the sole defendant.

5. After coming to know about the pendency of the Civil Suit, the petitioner came to Dimapur and contacted an advocate. After obtaining a certified copy of the order dated 24.01.2013, the petitioner came to know that the learned Trial Court had passed an *ex-parte* order on that date. Subsequently, the petitioner/defendant filed an interlocutory application being I.A.(C)112/2022 arising out of Civil Suit No.14/2012 before the learned Civil Judge (Senior Division) Dimapur, Nagaland, praying for recalling the order dated 24.01.2013. However, the Trial Court, vide order dated 21.07.2022, dismissed the interlocutory application, citing that it was barred by limitation. During the hearing, the petitioner/applicant also requested permission to participate in the remaining proceedings of the civil suit as a defendant, as per the provisions of Order IX Rule 7 of the Code of Civil Procedure, 1908. But, his prayer was rejected and dismissed the application.

6. The present petitioner, being highly aggrieved and dissatisfied with the order dated 21.07.2022 passed by the learned Civil Judge (Senior

Division), Dimapur in I.A.(C) No.112/2022, has preferred this revision petition challenging the propriety, legality, and correctness of the aforementioned order.

7. Mr. Jamir, learned counsel for the petitioner, has submitted that the Trial Court erred in law and facts by dismissing I.A.(C) No.112/2022. He argued that the Court failed to consider that the petitioner came to know about the order dated 24.01.2013 only on 07.03.2022, upon receiving the certified copy. Immediately thereafter, on 10.03.2022, within 3(three) days of obtaining the certified copy, the petitioner filed the interlocutory application. He further contends that the Trial Court should have calculated the limitation period from the date the petitioner acquired knowledge of the order on 07.03.2022, rather than from the date the order was passed. He emphasized that the petitioner acted promptly upon gaining knowledge of the case, filing the application without delay. Therefore, he submits that, the Trial Court's decision was arbitrary, as it failed to consider all the relevant facts and circumstances of the case, particularly the date when the petitioner became aware of the *ex-parte* order issued against him.

8. He further submitted that under the provisions of Order IX Rule 7 of the CPC, the petitioner should have been allowed to participate in further proceedings of the case. Denying the petitioner the opportunity to contest in the suit has caused manifest injustice to him. Thus, the impugned order dated 21.07.2022 passed by the learned Civil Judge (Senior Division), Dimapur in I.A. (C)112/2022 is improper, wrong, and has resulted in a miscarriage of justice. Therefore, the intervention of this Court is necessary.

9. Mr. Jamir, learned counsel for the petitioner, further submitted that the case is still at the stage of recording the respondent/plaintiff's evidence, and to date, the marking of documents and evidence of the plaintiff has not been completed. Therefore, the petitioner should have been given an opportunity to participate in the proceedings by setting aside the *ex-parte* order passed against him. He also submitted that in affidavit-in-opposition, the respondent claimed he had contacts with the petitioner through social media both before and after filing Civil Suit No.14/2012, in addition to telephonic conversations. The respondent stated he served summon/notices upon the petitioner through social media platforms such as email, Facebook, and WhatsApp, which the petitioner allegedly received, making him fully aware of the case against him. However, there is no proof that these summon notices or information was actually received by the petitioner, despite claims of being sent to his social media accounts. In fact, he submits that the petitioner had blocked the respondent from all social media platforms.

10. In addition to his submission, he relies on the decision passed by the Co-Ordinate Bench reported in **2019 2 GLR 202 [Plethico Pharmaceuticals Ltd. Vs. Zenith Drugs and Allied Agencies (P.) Ltd.]**. He specifically refers to paragraphs 24 and 25 of the said judgment, wherein it was held that "*it is knowledge of date of hearing and not the knowledge of the pendency of the suit, which is relevant for the purpose of considering an application under order IX, Rule 13 of CPC to set aside an ex-parte decree*". The paragraph No.26 of the said judgment read as under:

"Para-26, It is not a case of mere irregularity of service of summons, but

it is a case of non-service of summons and drawing of presumption of service of summons by the learned trial court in an improper exercise of discretion. Though there is no controversy that the appellant was aware of the pendency of the suit, nothing has been brought on record to indicate that the appellant was also aware of the date of hearing. Having come to know about the ex-parte decree on 22.04.2013, the application under order IX, Rule 13 *read with* Section 151 of CPC was filed on 18.05.2013, i.e., within a period of one month."

11. Mr. Jamir, learned Senior Counsel, further submitted that the petitioner did not receive any notice through paper publication either, as the notice was published in a newspaper widely circulated in Manipur. However, during that period, he was admittedly at Humayunpur in Delhi and therefore, never received any notice or summons, even through substituted means. Though, the respondent claims that service was completed on the petitioner, but there is no evidence to support this claim.

12. He further submitted that the learned Trial Court relied on ***Sarjo Devi @ Saroj vs. Dharampal (Deceased) through LRS & Ors.*** of the Delhi High Court, but this case is not applicable here. In Sarjo Devi's case, no application for recalling the order was filed before the court despite several years having passed. In contrast, in the present case, the application was filed immediately after the petitioner received knowledge of the case. Moreover, upon learning about the *ex-parte* order, the petitioner immediately applied for a certified copy and filed the application within 3 (three) days of gaining such knowledge. He acknowledged that he has no objection regarding the applicability of Article 137 of the Limitation Act as considered by the trial court. However, the issue to be decided is whether the limitation period should be counted from the date

of the order passed or from the date the petitioner became aware of the order's passing. It is an admitted fact that upon receiving information about the order in 2022, the petitioner immediately filed the application to recall the order within 3 (three) days of receiving the certified copy.

13. He further submitted that the case has been pending since 2012 and is currently at the stage of recording the evidence of the respondent/plaintiff and marking exhibits of the documents. Therefore, allowing the petitioner to participate in the proceedings by setting aside the *ex-parte* order passed against him would not prejudice the respondent/plaintiff. Thus, he prays for allowing the petition by granting the petitioner an opportunity to participate in the proceedings and quashing the order dated 24.01.2013 passed by the learned Civil Court (Senior Division), Dimapur, Nagaland.

14. On the other hand, Mr. Longkumer, learned counsel for the respondent, has submitted that the accused/petitioner knowingly avoided service of summons/notices, and after a long gap of 9 years, he filed the petition to set aside the *ex-parte* order passed against him by the learned trial court. He further submitted that the trial court rightly passed the order after considering the period of limitation for filing the interlocutory application to set aside the *ex-parte* order. The learned trial court correctly held that the petitioner failed to challenge the *ex-parte* order dated 24.01.2013 within the stipulated time of 3 years from the date of its passing, and after 9 years, the petitioner filed the application without even seeking condonation of delay. He further submitted that service was completed through substituted means and even through social media platforms such as Facebook, WhatsApp, and email. Thus, the petitioner

was well aware of the pendency of this case, but despite having such knowledge, he intentionally avoided receiving the notice. After many years of delay, he filed the petition to set aside the *ex-parte* order.

15. In this context, he relies on the decision of the Apex Court reported in **(2013) 14 SCC 81 [Basawaraj & Anr. Vs. Special Land Acquisition Officer]**, and emphasizes paragraphs 12 and 13 of the said judgment. These paragraphs hold that the Court has no power to extend the period of limitation on equitable grounds. It further states that while statutory provisions may cause hardship or inconvenience to certain parties, the court is obligated to enforce them strictly and give them full effect. Paragraphs 12 and 13 of the said judgment read as follows:

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. 24, p. 181:

"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.

16. In this context, Mr. Jamir, learned counsel for the petitioner, has submitted that it is a fact that the Court has no power to extend the limitation period. However, in the instant case, the petitioner filed the application within the statutory period of 3 years as per Article 137 of the Limitation Act. The petitioner filed the interlocutory application before the trial court immediately after receiving the certified copy of the order when he became aware of the *ex-parte* order passed by the trial Court. He further submitted that although a separate condonation petition was not filed by the petitioner, the request for setting aside the *ex-parte* order inherently includes a plea for condonation of delay. The court can consider this fact even though a separate application for condonation of delay was not filed.

17. In support of the above submission, he relied on the decision of the Apex Court ***reported in (2010) 12 SCC 159 [Bhagmal & Others vs. Kunwar Lal & Others]***, and particularly emphasized paragraphs 12 and 13 of the said judgment, which read as follows:

12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellants/defendants had clearly pleaded that they did not earlier come to the Court on account of the fact that they did not know about the order passed by the Court proceeding *ex-parte* and also the *ex-parte* decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellants/defendants for making the Order IX Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order IX Rule 13 application was, in our opinion, rightly considered by the

appellate Court on merits and the appellate Court was absolutely right in coming to the conclusion that appellants/defendants were fully justified in filing the application under [Order IX Rule 13 CPC](#) at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex-parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hyper-technical view that no separate application was filed under [Section 5](#).

13. The application under [Order IX Rule 13 CPC](#) itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice. Here was a party which bona fide believed the assurance given in the compromise panchnama that the respondent No. 1/plaintiff would get his suit withdrawn or dismissed. The said compromise panchnama was made before the elders of the village. Writing was also effected, displaying that compromise. The witnesses were also examined. Under such circumstances, the non-attendance of the appellants/defendants, which was proved in the further proceedings, was quite justifiable. The appellants/defendants, when ultimately came to know about the decree, had moved the application within 30 days. In our opinion, that was sufficient.

18. After hearing the submissions made by the learned counsels for both sides, I have perused the petition, affidavit-in-opposition, and replies filed by each side, as well as perused the order passed by the Trial Court. The issues to be determined in this case are whether the period of limitation should be calculated from the date of the order or from the date of knowledge. Additionally, it must be determined whether the Trial Court correctly issued the order in accordance with the provisions under Article 137 of the Limitation Act. Furthermore, it needs to be considered whether the notice was properly served on the petitioner through substituted methods or alternative means such as social media, Facebook, etc.

19. It is an admitted fact that during the pendency of this case or at the relevant time of institution of the connected civil suit, the petitioner was

residing in Humayunpur, Delhi. The respondent claims to have sent summon/notices to both his hometown address and his address in Delhi. However, when the summon notices were not served, the Court ordered substitution of service by publishing notice in the newspaper. The petitioner claims that at the time of the newspaper publication, he had already shifted to Delhi for business purposes. It remains undisputed that the notice was published in a newspaper widely circulated in Imphal, Manipur. Therefore, it cannot be considered that the notice was duly served on the petitioner or that he was aware of the publication of the notice in the newspaper.

20. Regarding the respondent's claim that the petitioner was aware of the case's pendency because notices were sent through WhatsApp, Facebook, etc., and supported by WhatsApp message chats submitted with the affidavit-in-opposition, it is noted that there is no other evidence proving that these messages were delivered, seen, or acknowledged by the petitioner. Thus, there is no conclusive evidence that notices were effectively served through social media as claimed by the respondent. The authenticity of these WhatsApp messages regarding their delivery and receipt by the petitioner through social media platforms remains unproven.

21. The learned Trial Court rightly held that Article 137 of the Limitation Act provides a statutory limitation period of 3 years, and there is no provision to extend this limitation. Therefore, it is undisputed that the limitation period is 3 years when such statutory limit is not specified for the relevant Sections. In this context, the learned counsel for the respondent also relied on a decision of the Apex Court, which held that

the court lacks authority to extend the period of limitation. However, it remains to be determined whether the petitioner had any knowledge of the case's pendency or received any notice in this regard.

22. From the discussion above, it is evident that there is no definitive proof that notices were properly served on the petitioner, either through social media or paper publication as claimed by the respondent. It is admitted that the petitioner appeared before the learned Court below seeking to vacate the *ex-parte* order passed by the learned Civil Judge (Senior Division), Dimapur, after 9 years of the order passed. However, despite the passage of 9 years since the order, the case is still at the stage of recording the plaintiff's/respondent's evidence and marking exhibits. Thus, the case has been pending for 9 years without reaching to a final stage, and it is currently at the stage of recording the plaintiff's evidence.

23. Moreover, from the above discussion, it cannot be concluded that the notice was duly served on the petitioner. Therefore, the date of knowledge should be considered for calculating the period of limitation. In this context, reference can be made to the judgment of the Co-ordinate Bench reported in **2021 SCC OnLine Gau 1735 [Anima Boro & Others vs. Hemanta Sargawari & Others]**, where paragraph 18 of the said judgment reads as follows:

18. Mr. Goswami further submits that even if the plaint was not served the defendant respondent No. 3 is supposed to file the petition for setting aside the decree within the prescribed period of limitation as the summons was duly served. The said submission is unacceptable to me. Article 123 of the Limitation Act, 1963 stipulates a period of thirty (30) days for setting aside a decree passed *ex-parte* from the date of decree or where the summons or notice was not duly served then when the applicant had knowledge of the decree. The word "duly" has its significance in answering the submission of Mr. Goswami.

The Apex Court in H.L. Trechan –Vs- Union of India reported in AIR 1989 SC 568 approved the meaning of the word “duly” as per Stroud’s Judicial Dictionary, Fourth Edition which is “done in due course and accordingly to law”. In Nahar Enterprises –Vs- Hyderabad Allwyn Ltd. and Another (supra) it was held that if the summons had not been duly served due to non compliance of the provisions of Order V Rule 2 of the CPC, as per Article 123 of the Limitation Act, 1963, the period of 30 days could not be counted from the date of decree but when the applicant had knowledge of the decree. The summons as hereinabove held was not duly served on the respondent No. 3.

24. In the instant case as well, it is evident that the notice cannot be considered as duly served upon the petitioner. Therefore, the date of knowledge should be considered, and the period of limitation will commence from the date the petitioner became aware of the *ex-parte* order passed by the learned trial court. It is noted that upon receiving this information, the petitioner promptly applied for a certified copy of the order and filed the petition before the trial court within 3 days of receiving the certified copy, without further delay, seeking to vacate the *ex-parte* order dated 24.01.2013 passed against him.

25. Based on the entire discussion above, it is evident that the respondent failed to establish that the notice was duly served on the petitioner or that he had knowledge of the pendency of this case. There is also no evidence proving that the notice was effectively served through social media. Therefore, although the petitioner appeared before the Court after 9 years with a petition to vacate the *ex-parte* order, due to the absence of evidence that the notice was duly served on him or that he had knowledge of the *ex-parte* order from its date of issuance, I find the respondent's claim that the notice was duly served untenable.

26. Considering that the case is still pending at the stage of recording

the plaintiff's/respondent's evidence and marking of exhibits, and taking into account all other aspects of the case, I deem it appropriate to allow the petitioner to contest the case and the same will not cause prejudice to the respondent. It is appropriate to grant the petitioner this opportunity to present his plea in this context.

27. Accordingly, the impugned Order dated 21.07.2022 passed by the learned Civil Judge (Senior Division), Dimapur, Nagaland in I.A. (Civil) No.112/2022 is set aside and quashed and the *ex-parte* order dated 24.01.2013 passed by the learned Trial Court in Civil Suit Case No.14/2012, is hereby stands vacated. The petitioner will accordingly participate in the proceeding and will place his plea. Further, considering the fact that the case has been pending for last 9 years, the learned Trial Court is hereby directed to expedite the trial proceedings and aim to dispose of the case preferably within 6 months from the date of this order.

28. In terms of above, this civil revision petition stands allowed and disposed of.

S/D
JUDGE

Comparing Assistant