

Sl. No. 27**IN THE HIGH COURT OF MANIPUR
AT IMPHAL****CRP (C.R.P. Art. 227) No. 10 of 2025**

Md. FA Khalid

Petitioner**Vs.**

Thoibi Bibi and another

Respondents

BEFORE

HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR**ORDER****18.09.2025**

[1] O.S. No. 5 of 2017 on the file of Civil Judge, Junior Division, Imphal East, Manipur (hereinafter trial court for convenience) is the genesis of the matter.

[2] The afore referred suit was filed by one Mst. Hamida Bibi with prayers for declaration of title and consequential reliefs. The revision petitioner before this Court Md. F.A. Khalid was the lone defendant and subsequently a proforma defendant was added. The proforma defendant Mrs. Thoibi Bibi is first respondent in the captioned CRP and the plaintiff's daughter (Hamida Bibi's daughter Nasim Banu) is second respondent. To be noted, Hamida Bibi died pending suit.

[3] It may not be necessary to dilate further on facts as the suit and the counter claim came to be dismissed by the trial court vide judgment dated 08.04.2024 on the ground that suit and the counter claim are barred by limitation. Be that as it may, the revision petitioner before

this Court preferred a regular first appeal under Section 96 of the Code of Civil Procedure, 1908 with a delay and an application for condonation of delay. To be noted, the delay sought to be condoned is 48 days.

[4] The condonation of delay (CoD) application was dismissed by the first appellate court in and by an order dated 04.02.2025 ('impugned order' for the sake of brevity, convenience and clarity).

[5] Before proceeding further, this Court deems it appropriate to record that both the respondents in the captioned the CRP namely the proforma defendant and the original plaintiff's daughter who step into her shoes have been duly served by speed post but they have not chosen to either come before this Court or enter appearance through a counsel.

[6] Considering that the impugned order is one in a CoD application the afore referred service is deemed sufficient.

[7] Reverting to the impugned order, the lone ground on which the CoD application was dismissed by the first appellate court was that the delay after the receipt of the certified copy of the order on 04.09.2024 till the date of filing of the CoD application on 18.10.2024 (44 days) did not stand explained satisfactorily.

[8] A careful perusal of the CoD application and the reasons supporting CoD prayer as recorded in the impugned order itself brings to light that the delay occurred owing to lapse in communication between counsel and the litigant. These reason has not been disbelieved i.e., lapse in communication between the counsel and the litigant, therefore the reasoning of the first appellate court that 44 days delay post receipt of

certified copy has not been explained satisfactorily is a hypothetical approach. Hon'ble Supreme Court in a catena of cases has repeatedly held that a wooden approach should not be taken in CoD applications and the principle that every days delay has to be explained has since been watered down. The obtaining legal position is not that every day's delay needs to be explained. The overall facts and circumstances of the case in the light of reasons adduced will be the main determinant.

[9] In the light of the narrative discussion and dispositive reasoning thus far this Court has no difficulty in coming to the conclusion that the impugned order of the first appellate court refusing condonation of 48 days delay in filing first appeal under Section 96 of the CPC deserves to be dislodged in exercise of powers under Article 227 of the Constitution of India.

[10] Before concluding, this Court deems it appropriate to write that condonation of delay do not in any manner infringe upon the rights and contentions of the respondents as the appeal, if taken on file, would necessarily mean that notice will have to go to the respondents before this Court and the respondents can contest the appeal on its own merits in accordance with law. It is also to be noted that dismissal on limitation point means rights are not extinguished but remedy is barred. This Court has also taken into account the obtaining position that a first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is a statutory right and not one at the discretion of the appellate court. This court has

also taken into account the principle that a right of first appeal should not be taken away lightly.

[11] Ergo, the sum sequitur of the narrative, discussion and dispositive reasoning thus far is, captioned CRP is allowed. Impugned order dated 04.02.2025 of first appellate court passed in Judl. Misc. Case No. 21 of 2024 is set aside. There shall be no order as to cost.

CHIEF JUSTICE

Sushil