

Case No :CMAppl.(SA) 0000122/2014

Party Name : SUSHANTA KR. DEY & 2 ORS Vs MOHIT KANTI DAS & 3 ORS

THE HONBLE MR. JUSTICE S.TALAPATRA

IN THE HIGH COURT OF TRIPURA
AGARTALA

CM. Appl. No.120 of 2014 in RSA No. 37 of 2014
&
CM. Appl. No.122 of 2014 in RSA No.38 of 2014
In CM. Appl. No.120 of 2014 in RSA No. 37 of 2014

Appellants -Petitioners:

1. Shri Subhanta Kumar Dey,
son of Shri Shrimat Kumar Dey, resident of Jail Road, P.O. & P.S. Dharmanagar, District - North Tripura.

2. Shri Abhijit Roy,
son of Shri Ranney Roy, resident of Madhabhari Road, Padmapar, P.O. & P.S. Dharmanagar, District - North Tripura.

3. Shri Biplob Dey,
son of Shri Nopal Chandra Dey, resident of village - Kaliai, P.O. & P.S. Ambassa, District - Dhalai.

By Advocate :
Mr. G.K. Nama

- V e r s u s -
Respondents:

1. Shri Mohit Kanti Das,
son of late Mohini Ranjan Das.

2. Smti Shilpi Das,
wife of Shri Mohit Kanti Das.

3. Shri Manojit Das,
son of Shri Mohit Kanti Das

All are residents of Raja Ram Mohan Road, Office Tilla, P.O. & P.S. Dharmanagar, District - North Tripura.

4. The Director, (Shri Dulal Mitra) NIT,
Silchar Centre, Allied Agency Building (2nd floor), UKD Sarani, Silchar, Cachar

By Advocate :
Mr. S. Deb, senior Advocate.
Mr. B. Debnath, Advocate.

In CM. Appl. No.122 of 2014 in RSA No. 38 of 2014

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BEFORE
THE HON'BLE MR. JUSTICE C. TALAPATRA

Date of hearing & delivery of : 05.02.2015
Judgment & Order

YES	NO

Whether fit for reporting

ORDER (ORAL)

[2] Heard Mr. G.K. Nama, learned counsel appearing for the appellant-petitioners and Mr. S. Deb, learned senior counsel along with Mr. B. Debnath, learned counsel for the respondents.
[3] Since the appellants intend to present the appeals under Section 100 of the C.P.C. questioning the common judgment dated 04.08.2011 delivered in Money Appeal No.01 of 2010 and Money Appeal No.02 of 2010 and since they could not present the appeal within the period of limitation as prescribed, they have filed these Misc. applications under Order XII Rule 1A of the C.P.C. for condoning the delay of 994 days in preferring the respective appeals. Hence, this Court has taken up these applications for condoning the delay together for disposal by a common order.

[4] Mr. G.K. Nama, learned counsel appearing for the appellant-petitioners has submitted that the limitation for filing the appeals have expired on 08.12.2011 on discussing the sixty days taken for obtaining the certified copy. Thus, the delay according to the report comes to 994 days. He has submitted that there is a 'betwixt' substantial question of law involved in the proposed appeals. He has submitted that while disposing the two appeals namely, Money Appeal No.02 of 2010 arising from the judgment delivered in Money Suit No.01 of 2009 and Money Appeal No.01 of 2010 arising from the judgment delivered in Money Suit No.05(winter case) of 2009, the Additional District Judge, North Tripura, Dharmanagar has failed to appreciate the grounds of objection raised on those appeals. He has stated that the finding of the first appellate court is absolutely perverse inasmuch as the plaintiffs have utterly failed to prove the obligation of the defendants in the suit or the cross-objector. On the contrary, the finding has debased a lawful claim in the cross suit. Even though it has been proved that the plaintiffs are under obligation to pay the remainder of the consideration money, Mr. Nama, learned counsel has submitted that such perverse finding has caused miscarriage of justice. Even the issue whether the agreement is a valid agreement having enforceability in the law being the core issue was not considered by the first appellate court. He has fairly submitted that the delay, as occurred, is a long delay but the appellant-petitioners have demonstrated the causes which are liable to be liberally considered, having regard to the substantial ends of justice.

[5] After delivery of the judgment dated 04.08.2011 the appellant-petitioners spent some time for arranging funds for preferring the appeals under Section 100 of the C.P.C. and came to Agartala on 01.10.2011. On legal advice, they returned to their place for collecting relevant papers and documents for preparing the memorandum of appeal but they were interviewed by long vacation which continued till 28.12.2011 having commenced from 02.10.2011. The limitation period expired on 08.12.2011. Even though the long vacation was over but the memorandum of appeal was not presented on the opening day i.e. 30.12.2011. The appellant-petitioners came to Agartala again in the first week of December, 2011. Then the engaged counsel prepared the memorandum of appeals and there had been delay of 43 days. In one appeal being RSA No.93 of 2011 and 111 days in another appeal being RSA No.20 of 2012. According to the appellant-petitioners, the delay was attributable for their financial stringency. Mr. Nama, learned counsel has submitted that due to some technical defects in the application filed for condonation of delay being CM. Appl. No.171 of 2011 arising from RSA No.93 of 2011 and CM. Appl. No.38 of 2012 arising from RSA No.20 of 2012 and both the appeals were withdrawn respectively on 09.01.2013 and 23.02.2013 with liberty to file afresh. Thereafter, on 17.07.2013, the appellant-petitioners preferred fresh appeals being RSA No.30 of 2013 and RSA No.31 of 2013 along with the applications for condonation of delay being CM. Appl. 79 of 2013 in RSA No.30/2013 and CM. Appl. 78 of 2013 in RSA 31 of 2013. The appellant-petitioners could not file the appeal with expedition as they could not arrange the court fees required for filing the appeals and that too a considerable time has been wasted. But again for some defects those appeals along the miscellaneous applications were withdrawn on 19.02.2014 with liberty to file afresh. Thereafter, for absence of the appellant-petitioner No.1 from the State, the appeals could not be filed afresh. For such absence, the delay from 19.02.2014 till 28.07.2014 could occur. Mr. Nama, learned counsel has submitted that considering these unintentional delay, the appellant-petitioners may be permitted to file the appeals on condonation.

[6] From the other side, Mr. S. Deb, learned senior counsel has vehemently resisted such prayer by contending that the ground for withdrawal of RSA No.93 of 2011 against the judgment delivered in Money Appeal No.02 of 2010 which is relevant to judgment delivered in Money Suit No.01 of 2009 is not for any formal defect but in the petition for condonation of delay being CM. Appl. No. 171 of 2011 there were interpolations and those interpolations were evidently made after affirming the petition by affidavit. It was stated that the judgment was passed on 04.08.2011 in Money Appeal No.02 of 2010, there was delay of 20 days but in Para-7 of the said very application the delay was shown to be 41 days. The same delay was shown in the cause title of the application. When the said interpolations were brought to the attention of the court by way of filing an objection by the respondents herein, the appellant-petitioners prayed for withdrawal of the appeal being RSA No. 93 of 2011 however with liberty to file afresh. Mr. Deb, learned senior counsel further submits that subsequently the appellant-petitioners preferred another appeal being RSA No. 31 of 2013 against the judgment passed on 04.08.2011 in Money Appeal 02 of 2010 which affirmed the judgment dated 07.06.2010 delivered in Money Suit No.01 of 2009. Since there was a delay of 620 days, an application under Order XII Rule 1A of the C.P.C. was filed for condonation. Even in the said petition, it had been stated in Para-2 that the reference was only made to the judgment dated 04.08.2011 delivered in Money Appeal No. 01 of 2010. There was misstatement apparent on the face of the pleadings. The appellant-petitioners again prayed for leave to withdraw the appeals which was granted on 19.02.2014. But these applications have been submitted before the court by suppressing those facts. Mr. Deb, learned senior counsel has submitted that Money Appeal No. 01 of 2010 is related in Money Suit (C) No. 05 of 2009 while Money Appeal No. 02 of 2010 is related to Money Suit No.01 of 2009. The appeal being RSA No. 93 of 2011 was related to Money Appeal No.02 of 2010. The appellant-petitioners filed an appeal being RSA No. 20 of 2012 which is related to Money Appeal No.01 of 2010. Both the appeals being RSA No.93 of 2011 and RSA No.20 of 2012 were withdrawn and the appellant-petitioners subsequently filed an appeal being RSA No. 30 of 2013 related to Money Suit (C) 05 of 2009 and the appeal being RSA No.31 of 2013 related to Money Appeal No. 02 of 2010 which arose out of Money Suit No.01 of 2009. In these memoranda of appeals, there crept various misstatements and mistakes which were attributable to the appellant-petitioners and their negligence. Finally, Mr. Deb, learned senior counsel has submitted that the appellant-petitioners are not entitled to get any discount in terms of the provisions of Section 14 of the Limitation Act as admittedly those appeals along with their applications for condoning the delay were filed in the competent forum. Hence, this Court may not adopt a liberal approach in condoning the delay. That apart, Mr. Deb, learned senior counsel has contended that there is no substance in the appeal inasmuch as by filing the cross suit the appellant-petitioners herein have sought the enforcement of the very agreement (Exh.1).

[7] Having regard to the submissions made by the learned counsel appearing for the parties, this Court finds that the agreement dated 18.07.2007 (Exh.1) had been entered in the backdrop that one Mohit Kanti Das, a stakeholder, decided to sell out his share of the company under name and style of 'Learnwars Technoson Private Ltd.' which has been carrying on their activities under seign of NIT Silchar centre. Accordingly, Exh.1 agreement was entered into, between the said stakeholder, Shri Mohit Kanti Das and the appellant-petitioners here namely, Subhanta Kumar Dey, Shri Abhijit Roy and Shri Biplob Dey. It has been categorically stated in the agreement that Mohit Kanti Das, his wife Smt. Shilpi Das, his son Manojit Das and Shri Abhijit Roy had formed a private limited company under the name and style of 'Learnwars Technoson Private Ltd.' and became directors of that company. Since Abhijit Roy was not in position to look after the management of their centre at Dharmanagar as the authorized representative of the NIT, Shri Mohit Kanti Das and Shri Manojit Das used to look after the management of the said centre. As Manojit Das left Dharmanagar for his other business and Mohit Kanti Das became ill, Mohit Kanti Das and his family members as the directors decided to sell their share to other intending parties and accordingly, the share value was decided at Rs.3,25,000/- (Rupees Three lakhs Twenty Five thousand) and the mode of payment was also settled by Exh.1. The present appellant-petitioners raised the issue of enforceability of the agreement by filing the written statement in the Money Suit No.01 of 2009 but filing a separate cross Money Suit being Money Suit (C) No.05 of 2009 related to M.S. No.01 of 2009 for releasing a sum of Rs.1,30,661/- (Rupees One lakh Thirty Nine thousand Six hundred Sixty) which includes the remainder of the amount which was due to be paid by installments i.e. Rs.1,75,000/- (Rupees One lakh Seventy Five thousand) and another sum of Rs.20,661/- (Rupees Twenty thousand Sixty One) which according to the appellant-petitioners was payable to them. The pleadings in the cross suit itself demonstrate that appellant-petitioners wanted enforceability of the said agreement (Exh.1).

[8] From the perusal of the impugned judgment, it appears that these appeals are directed against the concurrent finding of fact but hardly there is any sort of perversity in appreciating the evidence. Hence, the element of substantive justice for adopting a liberal approach is conspicuously absent in these appeals. Moreover, the utter latches on the part of the appellant-petitioners were large on the face of the records. Even the explanations are not only sketchy, but without minimal details which might persuade this Court to exercise latitude.

[9] Having held so, these miscellaneous petitions are dismissed.

JUDGE