GAHC030004692026

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

Case No. : I.A.(Civil)/136/2026

Sh. R. Ramngaihzuala
S/o Smt. Manthangi (L), R/o Electric Veng, Aizawl, Mizoram

VERSUS

Smt. Lalhmingthai
D/o Smt. Manthangi (L), R/o Electric Veng, Aizawl, Mizoram

Advocate for the Petitioner : Mr. C Lalfakzuala

Advocate for the Respondent : Lalremtluanga

Linked Case : RFA/24/2026

Sh. R. Ramngaihzuala
S/o Smt. Manthangi (L)
R/o Electric Veng
Aizawl
Mizoram

VERSUS

Smt. Lalhmingthai
D/o Smt. Manthangi (L)
R/o Electric Veng
Aizawl
Mizoram

Advocate for the Petitioner : Mr. C Lalfakzuala
Advocate for the Respondent : Lalremtluanga

BEFORE

HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI

02.11.2026

Heard C. Lalfakzuala, learned counsel for the applicant. Also heard Mr. Lalremtluanga, learned counsel for the opposite party.

2. The instant application has been filed under Section 5 of the Limitation Act, 1963, read with Order XLI Rule 3-A of the Code of Civil Procedure, 1908, for condonation of delay of 736 days in filing the connected Regular First Appeal against the impugned order dated 26.03.2026 passed by the Court of the learned Civil Judge (Senior Division)-V, Aizawl Judicial District, Aizawl, in Heirship Certificate Application No. 335/2024.

3. The brief facts of the case are that the learned Trial Court, vide the impugned order dated 26.03.2026, issued a Heirship Certificate in favour of the respondent in respect of the RCC building presently occupied by her and the floor presently occupied by Shri Sapkhuma, covered by LSC No. Aizawl-448/1976, located at Electric Veng, Aizawl. The applicant herein was not

impleaded as a party before the learned Trial Court and, as such, the impugned order was passed without affording him an opportunity of being heard.

4. The learned counsel for the applicant submits that the delay of 736 days has been caused due to bona fide reasons and circumstances beyond the control of the applicant, which are reproduced below:

5. The applicant came to know of the existence of the impugned order dated 26.03.2026 passed in Heirship Certificate Application No. 335/2024 when he received a copy of the plaint on 17.01.2025 in Eviction Suit No. 1/2025 filed by the respondent against the present applicant and one Shri Sapkhuma. As such, between the date of the receipt of the plaint on 17.01.2025 and the date of the impugned order dated 26.03.2024, a period of 298 days had already elapsed**.**

6. Immediately upon receipt of the eviction suit petition, the applicant engaged Shri Lalchhanliana Khiangte, Advocate, by executing a vakalatnama on 21.02.2025. However, the eviction suit was withdrawn and disposed of by order dated 20.01.2025 at the instance of the respondent**.**

7. As stated, the applicant came to know about the said impugned order dated 26.03.2024 when he approached his Advocate, Shri Lalchhanliana Khiangte, to seek his advice and requested him to explain the contents of the impugned order dated 26.03.2024, whereby the counsel informed the applicant

that the impugned order was adverse to his interest and that he ought to challenge the same by filing an appeal before the High Court.

8. Pursuant to the said advice, the applicant decided to challenge the impugned order and instructed his Advocate to take the necessary steps. The applicant also signed his Vakalatnama on 21.02.2025, requesting the Advocate to finalise the necessary arrangements for filing an appeal. Thereafter, the delay caused was also due to a bereavement in the family, as their eldest son died in a road accident on 13.03.2025.

9. Thereafter, the Advocate and his colleague advised the applicant to collect the connected documents and also to collect any other relevant documents in relation to the case. On 19.06.2025, the applicant's Advocate filed an application for obtaining a certified copy of the impugned order dated 26.03.2024, which was furnished to the Advocate on 23.06.2025. The applicant was informed by the counsel that it would take approximately 90 days for the Advocate to prepare the memorandum of appeal, and, as such, the applicant was under the belief that the Advocate was taking the necessary steps in preparing the case.

10. When the applicant approached his Advocate on 23.09.2025 to enquire about the progress of the case, he was informed by the Advocate that he had misplaced the connected case file/brief and that they could not recover it

despite their best efforts. The fact of the misplacement of the file was not revealed to the applicant by the Advocate. The applicant was accordingly informed by the Advocate on 23.09.2025 that they would make an attempt to recover the brief and take appropriate steps to file a fresh application for obtaining the necessary documents, which would take around 90 days again. The applicant was, therefore, led to believe that appropriate steps would be taken by the Advocate.

11. After the lapse of 90 days, the applicant again contacted his Advocate on 02.01.2026 to enquire about the progress. However, to his utter shock and surprise, the applicant was informed by the Advocate that no appropriate steps could be taken as the High Court was on vacation from 13.12.2025 to 11.01.2026. The applicant was also informed by his Advocate that he was busy preparing for his wedding ceremony, which was scheduled to be held on 29.01.2026, and that finalisation of the appeal would take some more time. Therefore, the applicant was asked to meet him again on 26.02.2026. The period between 21.02.2025 and 26.02.2026 amounted to 371 days.

12. The applicant was not at all satisfied with the conduct of his previous Advocate and the manner in which the case was handled, but had to wait as there was no other immediate option available to him to engage another

Advocate**.**

13. On 26.02.2026, when the applicant approached his lawyer, he was advised to engage another lawyer, as the previous Advocate was not in a position to finalise the appeal to be filed before the High Court.

14. Under such circumstances, the applicant had to disengage Shri Lalchhanhima, Advocate, and retrieve the brief from him on 26.02.2026 and immediately started looking for a different counsel.

15. It was only on 11.03.2026 that the applicant approached his present counsel and handed over the brief, whereupon the present counsel requested some time to familiarise himself with the facts of the case and also directed the applicant to furnish additional documents.

16. On 16.03.2026, the present counsel was provided with the necessary related documents, and the applicant also signed the Vakalatnama. Thereafter, the present counsel immediately took steps towards preparing the memorandum of appeal, commencing from 18.03.2026. As such, the period from 18.03.2026 to 30.04.2026 accounted for approximately 44 days required for completing the drafting of the memorandum of appeal. In the meantime, the present counsel was also preparing the condonation application along with the connected appeal.

17. Further, since the respondent had filed a title suit for eviction, the applicant requested the present counsel to prepare his written statement. It took about 44 days to prepare the memorandum of appeal and the condonation application in the Heirship Certificate proceedings, along with the written statement in the eviction suit.

18. It is also further submitted by the learned counsel for the applicant that, while finalising the documents, it was found that some of the documents were tainted and missing and required to be furnished, failing which the appeal would likely be rejected by the Registry at the filing stage. As such, necessary steps had to be taken to rectify the deficiencies in the documents. Moreover, the applicant informed the present counsel that, despite his efforts to approach the respondent for an amicable settlement, the respondent did not respond during the period from 16.04.2026 to 06.06.2026. As such, it was only in the first week of June that the applicant had no option but to approach the High Court by filing the present appeal.

19. The present counsel for the applicant also filed a fresh application on 08.06.2026 for obtaining a certified copy of the impugned order dated 26.03.2024 in Heirship Certificate Application No. 335/2024 and other related documents. A certified copy of the impugned order was furnished to the

applicant's counsel on 10.06.2026. Thereafter, the file was compiled and the necessary preparation was completed, and the matter could be filed only on 29.06.2026. As such, there was a delay of 736 days, and the present application has been filed praying for condonation of the said delay, which was neither intentional nor deliberate on the part of the applicant, but was caused due to the reasons stated above.

20. The applicant was diligently pursuing his case with the previous counsel, but because of the negligence and conduct of the previous counsel, the delay was caused, which can only be attributed to the conduct of the previous Advocate.

21. In support of his submission, the learned counsel relies on the case of *Rafiq & Anr. v. Munshilal & Anr.*, reported in (1981) 2 SCC 788, wherein the Hon'ble Apex Court has held that:

> "*The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is*

happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job."

"*What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate."*

"*However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."*

22. The learned counsel further relies on the decision in the case of *State of Nagaland v. Lipok & Anr.*, reported in (2005) 3 SCC 752, wherein the Hon'ble Apex Court has held that:

"*In O. P. Kathpalia v. Lakhmir Singh (1984 (4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector Land Acquisition v. Katiji (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters*

instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned."

23. The learned counsel for the applicant also submits that, insofar as Probate Case No. 13/2023 and the impugned order dated 05.12.2023 are concerned, the

applicant had already preferred an appeal against the same, wherein this Court, by order dated 27.08.2026 in I.A. (Civil) No. 133/2026, had granted leave. Further, this Hon'ble Court, by order dated 27.08.2026 in I.A. No. 134/2026, had issued notice upon the respondent in connection with the application for condonation of delay of 848 days in filing the accompanying appeal in the probate case.

24. The learned counsel for the applicant, therefore, submits that, despite exercising due diligence, the delay was caused due to negligence on the part of the previous counsel and for the reasons stated.

25. In view of the facts and circumstances, the learned counsel for the applicant, therefore, prays that the delay may be condoned in the interest of justice so that the case may be adjudicated on its merits in its right prespective.

26. Mr. Lalremtluanga, learned counsel for the opposite party, submits that the Heirship Certificate in Application No. 335/2024 was issued on 26.03.2024 on the strength of the Will dated 12.06.2017, which had been probated vide order dated 05.12.2023, without encroaching upon the rights of the applicant/appellant.

27. The probate proceedings in respect of the Will executed by Smt. Manthangi dated 12.06.2017, in Probate Case No. 13/2023, were initiated

before the Court of the Civil Judge (Senior Division)-I, Aizawl Judicial District, Aizawl, and on 05.12.2023, the applicant's counsel's attesting witnesses, Shri C. Lalramliana and Shri Lalthangfala, were present. They were examined on oath and their signatures were duly exhibited, along with the other relevant documents. Before the disposal of the probate case, newspaper publications were made to afford an opportunity to any interested person to file objections, and the same were published in the Vanglaini Daily newspaper dated 05.11.2023 and 06.11.2023 and Aizawl Post dated 02.11.2023. Since there was no objection, the said Will was probated. As such, the contention regarding denial of an opportunity of hearing, as advanced by the applicant, does not stand in the eye of law.

28. The learned counsel for the opposite party further submits that, in the absence of adequate reasons explaining the failure to file the appeal within the prescribed period of limitation, and in view of the fact that the alleged mistake of the counsel, has no legal foundation, the explanation offered for the delay is concocted and an afterthought. The counsel further submits that it is a settled principle of law that, with regard to condonation of delay, the party seeking condonation must sufficiently explain each period of delay and the circumstances as to why the appeal could not be preferred within the prescribed period of limitation. In the instant case, he submits that there is no specific

explanation for the delay caused and that the delay demonstrates negligence and lethargy. The only reason advanced in the instant application is that the delay was caused due to the negligence/mistake on the part of the previous counsel.

29. In support of his contention, the learned counsel relies on the decision in *Rajesh Kumar & Anr. v. Ved Prakash*, 2024 Legal Eagle (SC) 1031, wherein the settled principle of law is that negligence on the part of the counsel cannot be a ground to condone long and inordinate delay, as the litigant owes a duty to remain vigilant about his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.

29. The learned counsel also relies on the decision of the Apex Court in the case of *Sunil Poddar & Ors. v. Union Bank of India*, reported in 2008 Legal Eagle (SC) 24, wherein the Apex Court has held that once a publication is made in the newspaper, it becomes obligatory on the part of the parties to remain vigilant about such publication and take appropriate steps.

However, in the instant case, the applicant was not vigilant about the publication of the notice in the Vanglaini Daily newspaper dated 05.11.2023 and 06.11.2023 and Aizawl Post dated 02.11.2023 and as such, had waived his rights in contesting the probate case. Under such circumstances, the application

is devoid of merit and deserves outright rejection.

30. This Court has taken into consideration the submissions of both parties and perused the records, as well as the decisions and judgments relied upon by the parties**.**

31. Before arriving at a decision, it would be in the interest of justice to examine the decisions of the Hon'ble Apex Court on the question of condonation of delay, which presently hold the field, so as to determine the issue involved in the present application with proper precision.

32. From the above submissions, it is evident that, for the purpose of condonation of delay, sufficient cause must be established by showing that, owing to certain events or circumstances, the applicant was not in a position to file the appeal within the prescribed period of limitation.

33. From the submissions of the learned counsel for the applicant and the records, it appears that the impugned order dated 26.03.2024 was passed by the learned Trial Court in Heirship Certificate Application No. 335/2024. Apparently, as per the records, the application was filed on 26.03.2024 and disposed of on the same day by the impugned order dated 26.03.2024, without affording the present applicant an opportunity to raise any objection.

34. The records further reveal that a reading of the impugned order does not

indicate that a copy of the order was served upon the present applicant, as the Court had furnished a copy to the respondent and retained another copy for its record**.**

35. It appears from the records that the present applicant came to know of the impugned order dated 26.03.2024 only on 17.01.2025, when an eviction suit was filed by the present opposite party against the applicant. As such, taking into consideration the date of the impugned order, i.e., 26.03.2024, and the date on which the applicant acquired knowledge of the impugned order, there was a delay of 298 days. The records further reveal that the eviction suit filed by the opposite party was also withdrawn on 20.01.2025.

36. The Court has also taken into consideration the submissions of the learned counsel for the applicant and the objections raised by the opposite party on the ground of the fault of the previous counsel, who was engaged by the applicant to pursue the matter. It further transpires from the application that, after the applicant had entrusted his previous counsel to do the needful for preparation of the appeal to be filed before this Hon'ble High Court, the applicant continued to rely upon his previous counsel, however, it appears that the earlier counsel had not diligently pursued the matter entrusted to him by the applicant.

37. The submission of the learned counsel that, when the applicant had

already entrusted his previous counsel to do the needful, the earlier counsel ought to have taken the necessary steps, deserves consideration, this is particularly so because the applicant, being an innocent party, should not suffer injustice on account of the failure of his counsel, who was under an obligation to update the applicant about the progress of his case. The same principle has already been observed by the Apex Court in the cases of *Rafiq* (supra) and *Lipok Ao* (supra).

38. The Court, while considering an application for condonation of delay, has to take into consideration the facts of each case in its own perspective and in light of its own facts and circumstances. No two cases can be alike in an application for condonation of delay. In the present case, this Court finds that sufficient cause has been shown, more particularly when the applicant had handed over the brief to his earlier counsel and had continuously pursued the matter for preferring an appeal against the impugned order dated 26.03.2024. This Court further finds that there was no negligence or inaction on the part of the applicant.

39. Under the given facts and circumstances, this Court is of the view that the applicant has shown sufficient cause for condonation of delay of 736 days in preferring the appeal against the impugned order dated 26.03.2024 and,

accordingly, the delay is condoned.

40. The instant application stands allowed and disposed of. The Registry shall list the connected Regular First Appeal for admission in the usual course.

JUDGE

Comparing Assistant