GAHC030006352025

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

Case No. : CRP/10/2025

Zodinpuii
W/o Thangnghinglova (L) R/o Tlangnuam, Aizawl, Mizoram

VERSUS

Smt Vanlalpari
W/o Thangnghinglova (L), R/o Luangmual, Lunglei

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei

Advocate for the Respondent : Mr C Zokhuma

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT & ORDER (ORAL)

20.11.2026

Heard Mr. Joseph Lalchhanhima Renthlei, the learned counsel for the petitioner. Also heard Ms. Emily L. Chhangte, the learned counsel for the respondent.

2. This civil revision petition has been filed by the petitioner, under Article

227 of the Constitution of India, impugning the Order dated 15.05.2025, passed by the Court of learned Civil Judge (Senior Division-I), Lunglei, in CMA No. 25/2025, arising out of Probate Case No. 5/2025, whereby, the delay of 1,281 days in filing the Probate Case No. 5/2025 was condoned by the Trial Court.

3. The facts relevant for the consideration of instant revision petition, in brief, are that the present petitioner was married to deceased Sh. Thannghinglova and had three children out of the said wedlock. The husband of the petitioner was working in the Agriculture Department of the Government of Mizoram and he died in harness on 26.10.2016. The respondent herein, namely, Smt. Vanlalpari, also claims herself to be the wife of the deceased Thannghinglova.

4. After the death of the husband of the petitioner, the petitioner and her children filed a writ petition before the Gauhati High Court, which was registered as WP(C) No. 217/2016, claiming for the retirement benefits of deceased Thannghinglova, namely, the death-cum-retirement gratuity, GPF, GIS, etc. The said writ petition was allowed by a coordinate Bench of this Court on 13.02.2017 whereby, direction was given to the concerned department to

disburse the said benefit in favor of the children of the deceased Thannghinglova. The department concerned also processed the family pension of the deceased in favor of the petitioner.

5. However, the respondent made claims to the family pension and other retirement benefits of the deceased Thannghinglova and she also applied for heirship certificate before the Court of learned Civil Judge, Lunglei. The said case was registered as Heirship Certificate Case No. 66/2017 and on 10.03.2017, the Heirship Certificate number 66/2017 was issued to the respondent.

6. Being aggrieved with the issuance of heirship certificate in favor of the respondent, the present petitioner preferred an appeal against the said order before this Court. The said appeal was registered as RFA No. 16/2018. Ultimately, by Order dated 09.05.2019 passed in RFA No. 16/2018, the appeal was allowed and the heirship certificate issued to the respondent by the Court of learned Civil Judge, Lunglei was set aside and the case was remanded back to the Trial Court for a fresh adjudication from the stage of filing of the written statement by the present petitioner. The respondent adduced the evidence of four (4) witnesses in the said heirship certificate case and also exhibited 11

documents whereas, the petitioner produced the evidence of three (3) witnesses and exhibited 12 documents in support of her claim.

7. In the meanwhile, the petitioner got probate in respect of Will dated 03.05.2016, which was executed by the deceased Thannghinglova wherein, the retirement benefits were bequeathed in the name of petitioner and her son. The Court of learned Civil Judge (Senior Division), Aizawl, by order dated 11.09.2018, granted probate in respect of the said Will dated 03.05.2016 in the Probate Application No. 16/2018 in respect of the petitioner and said order of grant of probate remains unchallenged from any quarter till date.

8. During the pendency of the Heirship Certificate Case No. 66/2017, before the Trial Court, the respondent had instituted a Probate Case No. 5/2025, seeking probate in respect of a Will dated 29.06.2013, executed by deceased Thannghinglova in favor of the respondent whereby, the pensionary benefits of the deceased Thannghinglova was bequeathed to the respondent. Since there was delay in filing the said probate application, the respondent had filed an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 1,281 days in filing the said probate application, which was allowed by the Trial Court by the Order dated 15.05.2025 passed in Civil Miscellaneous

Application No. 82/2025 arising out of Probate Case No. 5/2025. The said order has been impugned in this instant civil revision petition.

9. Mr. Joseph Lalchhanhima Renthlei, the learned counsel for the petitioner has submitted that the Trial Court has erred in condoning the huge delay of 1,281 days in filing the probate application, inspite of the fact that the respondent herein had failed to satisfy that she was prevented from filing the probate application within the prescribed period of limitation because of sufficient cause. He submits that the delay of 1,281 days was condoned by the Trial Court even without issuing notice to the present petitioner and without the present petitioner being impleaded as a party in that probate case though the respondent was well aware about the fact that the retirement benefits of the deceased Thannghinglova had been disbursed to the children of the present petitioner in terms of the directions given by this Court in WP(C) No. 217/2016. The respondent was also aware about the fact that the present petitioner is contesting the Heirship Certificate Case No. 66/2017. Hence, she ought to have been impleaded the petitioner in the probate case. The learned counsel for the petitioner further submits that since the retirement benefits of the deceased Thannghinglova was bequeathed by him to the present petitioner and since the said will has already been probated and no challenge has been put to the

same, the Trial Court ought to have taken into consideration the said fact before condoning a huge delay of 1,281 numbers of days.

10. The learned counsel for the petitioner further submits that in her application under Section 5 of the Limitation Act filed before the Trial Court, by the present respondent, for condoning the delay of 1,281 days in filing the probate application, it was stated by the present respondent in paragraph No. 5(c) of the said application that the writ petition filed by the present petitioner was disposed of on 27.03.2025. However, he submits that same is a wrong averment made in the condonation application inasmuch as, the Writ Petition No. 217/2016 was disposed of by the High Court on 13.02.2017 and not on the date as mentioned by the respondent in the condonation delay application. He further submits that though in paragraph No. 5(d) of the condonation application, the respondent had stated that she was legally advised to wait for final adjudication before initiating any probate proceeding, however, the Probate Application No. 5/2025 was filed during the pendency of the Heirship Certificate Case No. 66/2017 and as such, said plea may also not be a valid ground for condoning the delay.

11. He submits that the huge delay of 1,281 days was condoned without

application of mind and without any valid explanation for such an inordinate delay in filing the probate case by the respondent. He further submits that in the instant case, since huge delay of 1,281 days is involved, the requirement of the Court arriving at a satisfaction that the respondent was prevented by sufficient cause is necessary and same was not there. He submits that the Trial Court condoned the inordinate delay of 1,281 days in filing the probate application by the respondent mechanically and without recording valid reasons solely on the ground that due to pendency of different cases between the parties, the applicant was legally advised to wait till final adjudication before initiating the probate proceeding, ignoring the statutory requirement of sufficient cause for condoning such delay. He, therefore, submits that the impugned order is liable to be set aside. The learned counsel for the petitioner has cited following rulings in support of his submissions:-

a) ***D. Gopinathan Pillai vs. State of Kerala & Anr***. reported in ***(2007) 2 SCC 322***.

b) ***Shivamma (Dead) by L.Rs vs. Karnataka Housing Board & Ors.*** reported in ***2025 INSC 1104***.

c) ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*** reported in ***(2013) 12 SCC 649***.

12. On the other hand, Ms. Emily L. Chhangte, the learned counsel for the respondent has submitted that the Trial Court has rightly condoned the delay of 1,281 days after considering the materials on record and after finding that the respondent was prevented by sufficient cause in preferring the Probate Case No. 5/2025.

13. She further submits that the present petitioner is not the legally married wife of the deceased Thannghinglova, whereas, the respondent is the legally married wife of deceased Thannghinglova and as such, she is entitled to get all pensionary benefits of the deceased. She, however, fairly submits that the moot question on which the decision as to who would get the pensionary benefit from the deceased is dependent upon is as to who is the legally married wife of the deceased and said question is pending for consideration before the Trial Court in Heirship Certificate Case No. 66/2017. She submits that the death-cum-retirement gratuity and other pensionary benefits of an employee is to be decided by the relevant service rule and pensionary rules and same cannot be bequeathed by such an employee. She submits that as the Heirship Certificate Case No. 66/2017 is still pending before the Trial Court, it is only the outcome of the said case which would decide as to who would get the pensionary benefit of the deceased Thannghinglova. As such, she prays for passing

appropriate orders by this Court.

14. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on the record. I have also gone through the rulings cited by the learned counsel for the petitioner in support of his submissions.

15. As per Section 29(8) of the Mizo Marriage, Divorce & Inheritance of Property Act, 2014 the prescribed period of limitation for filing a probate application is five (5) years from the death of the Testator. However, admittedly in the instant case, there was a delay of 1,281 days in filing the Probate Case No. 5/2025.

16. It appears that while condoning the aforesaid delay, the Trial Court without recording its satisfaction that the present respondent [petitioner of Civil Misc. Application No. 82/2025] has been able to show that he was prevented by sufficient cause in filing the Probate Case No. 5/2025 within the prescribed period of limitation condoned the delay. The Trial Court has condoned such a huge delay without recording aforementioned satisfaction which in the considered opinion of this Court may be regarded as a jurisdictional error and may amount to perversity.

17. Apart from that, the fact that in respect of the same subject matter with regard to which the will of which probate was sought for by the respondent, another will in favor of the present petitioner has already been probated and the said probate has not yet been revoked, is also a factor to be considered in this matter.

18. On a bare perusal of the impugned order, it appears that the Trial Court merely on the basis of the plea of the present respondent that due to pendency of the writ petition before the High Court from the year 2016 which was ultimately decided on 27.03.2025, the respondent was legally advised to wait the adjudication of initiating any probate proceeding, the Trial Court condoned the delay without recording any satisfaction that it was satisfied that the present respondent was prevented by sufficient cause from filing the Probate Case No. 5/2025 within the prescribed period of limitation.

19. This Court is of considered opinion that if a Court condones huge delay of 1,281 days in filing the relevant application (in the instant case, Probate Case No. 5/2025) without arriving at a satisfaction that the applicant was prevented by sufficient cause from approaching the Court within the prescribed period of limitation, same would amount to failure on the part of the Trial Court to

exercise its jurisdiction under Section 5 of the Limitation Act, 1963 properly. Such an order, as was passed in this case, by the Trial Court, would amount to a perverse order. This Court is of considered opinion that the Trial Court has failed to exercise its discretion under Section 5 of the Limitation Act, 1963 properly, by ignoring the statutory limitation prescribed therein altogether. As such, this is a fit case to interfere with such order by this Court in exercise of its powers under Article 227 of the Constitution of India.

20. In view of the discussions made and reasons stated in the foregoing paragraph of this judgment, the Order dated 15.05.2025 passed by the Court of learned Civil Judge (Senior Division-I), Lunglei in Civil Miscellaneous Application No. 82/2025, arising out of Probate Case No. 5/2025 is hereby set aside and quashed. Consequently, the Probate Case No. 5/2025 is also held to be barred by limitation.

21. With the above observation, this civil revision petition is allowed.

22. Let a copy of this order be sent to the Trial Court for information.

JUDGE

Comparing Assistant