GAHC010138732024

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

Case No. : I.A.(Civil)/2072/2024

THE STATE OF ASSAM And Ors
REP BY THE COMMISSIONER AND SPECIAL SECRETARTY PWD ROADS
DEPTT GOVT OF ASSAM

2: The Chief Engineer Pwd Roads Assam
CHANDMARI GUWAHATI 3 DIST. KAMRUP METRO ASSAM PIN 781003

3: The Superintendent Engineer
PUBLIC WORKS DEPTT DIBURGARH ROADS CIRCLE DIBRUGARH

4: The Exuecutive Engineer
PWD DIBRUGARH RURAL ROADS DIVISION DIBRUGAR

VERSUS

Pradip Kumar Das
S/O LT ABHOY CHARAN DAS R/O FATASIL AMBARI NIPEN BORA ROAD
GUWAHATI KAMRUP METRO ASSAM PIN 781025

Advocate for the Petitioner : MR. A BISWAS, MS M DAS,MR. P SAIKIA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

29.08.2024

Heard A. Biswas, the learned counsel for the applicant. None appears for the respondent, though notice was duly served upon him by dasti mode.

2. This interlocutory application, under Section 5 of the Limitation Act, 1963, is preferred by the applicant; The State of Assam and three others for condonation of delay of 357 days in preferring an appeal, against the Judgment, Order and Decree dated 10.04.2023, passed by the learned Civil Judge No.2 Kamrup (M), Guwahati in Title Suit No. 362 of 2014.

3. It is to be noted here that vide impugned Judgment, Order and Decree dated 10.04.2023, the learned Civil Judge No.2 Kamrup (M), Guwahati in Title Suit No. 362 of 2014, had decreed the suit and for realization of a sum of Rs. 2,98,76,518.39 and further declared that order dated 26.05.2010 issued by the defendant No.5 is illegal, unfair, baseless and null and void and not binding upon the plaintiff. And the Corrigendum dated 03.03.2011 issued by the defendant No.5 is void and not binding upon the plaintiff and also the decision of Empowered Committee dated 19.01.2012 upholding the termination of the work illegal and not binding upon the plaintiff. It is further decreed that the letter dated 22.05.2012 issued by the defendant No.3, rejecting the representation of the plaintiff is null and void and not binding upon the plaintiff.

4. The background facts leading to filing of the present petition are adumbrated here in below:-

> "The applicants herein had invited Notice Inviting Tender (NIT) for construction and maintenance of rural roads and cross drainage works under the Pradhan Mantri Gram Sadak Yojana (Ph-VI) for the year 2006-07 from (i) Grab TE to Bamunbari (ii) Rajgarh to Lengeri package, including cross-drainage works and routine maintenance of the works for five years, bearing No. As-06-38 and the value of the work was 3,09,48,000/, the time schedule for completion of work was 9 months.

The bid submitted by the respondent becomes successful and he was awarded the contract. Due to various difficulties he failed to complete the works in time and extension was granted on three occasions. Last extension expired in the month of October 2008. Thereafter, despite 87.5% progress the contract was rescinded, though the respondent had filed representation to allow him to complete the work that failed to yield any result. Thereafter, the respondent herein, as plaintiff had instituted a Title Suit, being Title Suit No. 362 of 2014 for realization of dues and declaration.

The applicants as defendant contested the suit by filing written statement. But, after hearing the parties the learned trial court had decreed the suit vide Judgment, Order and Decree dated 10.04.2023. The applicants, after the judgment and decree had instructed the Government Pleader to file an appeal against the said judgment and decree. But the Government Pleader had not taken step for filing the appeal in time. Ultimately, when the Civil Nazir of the learned Civil Judge, (Sr. Divn.). went to the office of the applicants for execution of the decree in Title Execution Case on 37/2023, then the applicants enquired about filing of appeal and thereafter engaged a counsel to file appeal and the same was filed on 12.07.2024 and in the meantime 357 days elapsed. Therefore the applicants have approached this court for condonation of the delay."

5. Mr. Biswas, the learned counsel for the applicant submits that the while the judgment and decree was passed 10.04.2023, the same was not made aware to the applicants. However, on receipt of summon in Title Execution Case No. 37/2023, the applicant No.2 vide letter dated 07.07.2023 had asked the applicant No.4 to

prepare para wise comment along with relevant documents, to the applicant No.2. Thereafter, the applicant No.4 had instructed the Government Pleader to prefer an appeal against the said judgment and decree with due authorization to take step in the Title Execution Case. But the applicant became shock when the Civil Nazir of the learned Civil Judge, Sr. Divn. went to the office of the applicants for execution of the decree in Title Execution Case No. 37/2023 for attachment of the Saving Bank Account standing in the name of PWD Department. Thereafter, the applicant No.2 entrusted the applicant No.4 to prefer appeal against the judgment and decree in Title Suit No. 362/2014. Thereafter, an enquiry was made about the status of appeal but the Government Pleader has failed to furnish any status. Thereafter the applicants have engaged one counsel, namely, Ms. M. Das to take steps for filing the appeal. Thereafter, the appeal was prepared and filed before this court but in the meantime 357 day elapsed. Mr. Biswas submits that the delay is not intentional rather it is circumstantial and it occurred due to negligence of the Government Pleader and also due to some official communication and therefore, it is contended to condone the same and that there is merit in appeal and that he has arguable points also.

6. Having heard the submissions of learned counsel for both the applicants, I have carefully gone through the petition as well as the documents placed on record.

7. Before directing a discussion into the points raised by the learned counsel, it would be in the interest of justice to go through the decision of Hon'ble Supreme Court in respect of condonation of delay and presently holding the field so to deal with the issue with greater precision.

8. Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag vs. Mst. Katiji;** reported in **(1987) 2 SCC 107,** has observed as under:-

"**The legislature has conferred the power to condone delay by**

enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts 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, and such a liberal approach is adopted on principle as it is realized that:

> **1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.**
> **2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.**
> **3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.**
> **4. 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.**
> **5. 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.**

6. It must be grasped that judiciary is respected not on account of its power to legalize 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 praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even- handed justice on merits in preference to the approach which scuttles a decision on merits."

9. Again in **N. Balakrishnan v. M. Krishnamurthy**; reported in **(1998) 7 SCC 123,** Hon'ble Supreme Court went a step further and made the following observations:-

"**It is axiomatic that condonation of delay is a matter of**

discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be un-condonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see

that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

10. In the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649,** Hon'ble Supreme Court, referring to earlier authorities**,** broadly culled out the principles of condonation of delay as under:-

i) **There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.**

ii) **The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.**

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side

unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

11. To the aforesaid principles, Hon'ble Supreme Court also added some more guidelines taking note of the present day scenario, in the said case. They are: **-**

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

12. Again in the case of **Pundlik Jalam Patil (Dead) by L.Rs. vs.**

Executive Engineer jalgaon Medium Project and Another, reported in **(2008) 17 SCC 448,** while dealing with the issue of condonation of delay, Hon'ble Supreme Court has held as under:-

> "**29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his *Jurisprudence* states that the laws come to the assistance of the vigilant and not of the sleepy.**
>
> **30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/ resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.**
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> **31. It is true that when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of**

limitation is same for citizen and for governmental authorities. The Limitation Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings."

13. The legal proposition, which can be crystallized from the aforesaid decisions and discussion, is that courts are not supposed to legalize injustice, but are obliged to remove injustice. Therefore, liberal, pragmatic, justice-oriented, non-pedantic approach has to be adopted while dealing with an application for condonation of delay if 'sufficient cause' is being shown. The terms 'sufficient cause' should be understood in their proper spirit, philosophy and purpose and regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation. The paramount and pivotal consideration is substantial justice; the technical considerations should not be given undue and uncalled for emphasis. In respect of deliberate causation of delay, the presumption is not available but, gross negligence on the part of the counsel or litigant is to be taken note of, besides lack of bona fides imputable to a party seeking condonation of delay, which is a significant and relevant fact. The courts should not adhere to strict proof, but required to be vigilant so that there is no real failure of justice. The approach of the court must be liberal but at the same time it must be reasonable also. In case of inordinate delay, strict approach is required to be taken while in case of delay of short duration, a liberal delineation is required. The fundamental principle, being weighing

the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. While condoning delay the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. In the case of the explanation, being offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation. The entire gamuts of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception. The State or a public body or an entity, representing a collective cause, should be given some acceptable latitude. But, the law of limitation is same for citizen and for governmental authorities.

14. Thus, having informed ourselves, about the proposition of law presently holding the field in respect of condonation of delay, now an endeavour will be made how far the applicant has been able to explain the delay of 357 days in preferring the connected appeal.

15. Now, averting to facts herein this application I find that indisputably, the judgment and award, which is being sought to be impugned in the connected appeal, was delivered on 10.04.2023. But the appeal was filed only on 12.07.2024 along with present application for condonation of delay. Though it is contended that the Government pleader had pursued the Title Suit before the learned Trial Court and that the Government Pleader had not made aware of the result of the Title Suit immediately after pronouncement of the same, yet, it is not clear from the pleadings that when the applicants were made aware of the same. Though it is stated that the Government Pleader was instructed to prefer an appeal against the said judgment and decree vide a letter dated 10.07.2023, yet, thereafter no step seems to be taken to enquire about filing of the appeal. And only when the Civil Nazir of the learned Civil

Judge, Sr. Divn. went to the office of the applicants for execution of the decree in Title Execution Case on 37/2023, by attachment of the Saving Bank Account standing in the name of PWD Department, only then the applicants had enquired about the status of the appeal and when they came to know that no appeal was preferred by the Government Pleader they then engaged a counsel to prefer the appeal. It is also not clear from the pleading as well as from the submission of the learned counsel when the Civil Nazir had visited their office to execute the decree. Thus callousness on the part of the applicants are writ large from their pleading and also from the submission of their counsel. They even not bothered to place on record the dates on which they had received summon in the Title Execution Case and when the Civil Nazir had visited their office and also they did not explain the cause of delay by placing on record the true account of the facts. Mere placing on record some official communication between the applicants, to the considered opinion of this court are not sufficient to explain the inordinate delay.

16. Though an attempt is being made to demonstrate that the applicant are officials of a Government Department some official formalities are required to be observed before filing of the appeal on12.07.2024, yet, the same cannot be accepted in view of the fact that the doctrine of equality before law demands that all litigants, including the State as a litigant, are to be accorded the same treatment and the law has to be administered in an even-handed manner, as held in the case of **Mst. Katiji (supra).**

17. It is however, well settled that being a public body/Government Department, the applicant deserve some acceptable latitude. This principle is laid down in the case of **State of Nagaland vs. Lipokao and Ors. reported in (2005) 3 SCC 752.** But, the applicant has failed to make out a case where the public interest was shown to have suffered owing to acts of fraud or collusion on the

part of its officers or agents. Lack of *bona-fides* on the part of the applicants are also writ large herein this case.

18. Thus, having carefully scrutinized the entire gamut of facts, this court is of the considered opinion that the delay of 357 days, which occurred here in filing the connected appeal, could not be explained properly by the applicant. There is serious lapse on the part of the applicant and if the same is condoned, it would amount to putting a premium upon the lapses on the part of the applicant.

19. In the result, this Court finds no merit in this application. Accordingly, the I.A. and the connected appeal stand **dismissed**. The parties have to bear their own cost.

JUDGE

Comparing Assistant