

GAHC030006652024



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

Case No. : I.A.(Civil)/180/2024

Smt. C. Ngundawngi and Anr.
D/o Hengchina (L)
R/o Tuipang L, Siaha District, Mizoram 2: Sh.Chauhbehrai Rean

VERSUS

Sh. Thawngphena and Anr.
S/o Thangbuanga (L)
R/o Baptist House, Laitumkhrah, Shillong, Meghalaya 793003 2:Smt.
Lalneihmawi

Advocate for the Petitioner : Mr. Lalrokunga Pautu (Legal Aid Counsel)

Advocate for the Respondent : Mr. Jonathan Lalrintluanga for R1 & R2

Linked Case : I.A.(Civil)/181/2024

Smt. C. Nundawngi and Anr.
D/o Hengchina (L)
R/o Tuipang L
Siaha District
Mizoram

2: Sh. Chauhbehrai Reang
S/o Bharat Chandra Reang
R/o Behliangchhip Belianchief
North Tripura
Jampui
Tripura - 799269
VERSUS

Sh. Thawngphena and Anr.
S/o Thangbuanga (L)
R/o Baptist House
Laitumkhrah
Shillong
Meghalaya 793003

2:Smt. Lalneihnawii
W/o Thangphena
R/o Baptist House
Laitumkhrah
Shillong
Meghalaya 793003

Advocate for the Petitioner : Mr. Lalrokunga Pautu (Legal Aid Counsel)
Advocate for the Respondent : Mr. Jonathan Lalrintluanga for R1 & R2

Linked Case : RFA/37/2024

Smt. C. Ngundawngi and Anr.
D/o Hengchina (L)
R/o Tuipang L
Siaha District
Mizoram

2: Mr. Chauhbehrai Reang
S/o Bharat Chandra Reang
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2:Smt. Lalneihmawii
W/o Thawngphena
R/o Baptist House
Laitumkhrah

Shillong
Meghalaya - 793003

Advocate for the Petitioner : Mr. Lalrokunga Pautu (Legal Aid Counsel)
Advocate for the Respondent : Mr Ram Murmu

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

Date : **24.06.2025**

- 1.** Heard Mr. Lalrokunga Pautu, the learned Legal Aid Counsel for the applicants. Also heard Mr. Jonathan Lalrintluanga, the learned counsel for the respondents.
- 2.** This Interlocutory Application has been filed by the applicants, namely, (1) Smt. C. Ngundawngi, and (2) Sh. Chauhbehrai Reang under Section 5 of the Limitation Act, 1963, praying for condonation of delay of 91 days in filing the connected Regular First Appeal, whereby the judgment and order passed on 02.05.2024 by the learned Civil Judge, Senior Division No. 3, Aizawl in Money Suit No. 11/2020 has been impugned.
- 3.** The learned Legal Aid Counsel for the applicants has submitted that the applicants were the defendants in Money Suit No. 11/2020 instituted by the present respondents before the Court of the learned Civil Judge, Senior Division No. 3, Aizawl. The said suit was registered as Money Suit No. 11/2020 and it was decreed against the present applicants by the judgment and order dated 02.05.2024 by the Trial Court.
- 4.** The applicants were directed to pay decretal amount of Rs. 7,37,065/- to the respondent along with an interest at the rate of 6% per annum from the year 2019 till the realization. They were also directed to pay Rs. 10,000/- as the cost of the suit.

5. It is submitted by the learned Legal Aid Counsel for the applicants that the applicant No. 1 hails from Siaha district of Mizoram, whereas applicant No. 2 hails from the State of Tripura and they could not meet each other personally to decide the future course of action as regards the impugned judgment due to sudden arrival of the cyclone "Remal", which caused road blockage and landslides in several places and which also affected the general transportation greatly. He further submits that it was only in the second week of June, i.e., on 11.06.2024, that the applicants were able to meet at Aizawl and thereafter, they decided to pursue their respective cases individually.

6. It is submitted by the learned Legal Aid Counsel for the applicants that thereafter, the applicant No. 1 consulted one Mr. Lalrinhlua, advocate for pursuing the matter in the third week of June and gave relevant files for his perusal. However, the said counsel returned the file to the applicant No. 1 after around two weeks saying that as he is not acquainted with the proceedings of the Appellate Court. He is not inclined to take the brief and advised the applicant No. 1 to approach some other legal counsel. In support of his submission, a copy of an affidavit of the declaration by Mr. Lalrinhlua has been annexed along with the application for condoning the delay as Annexure-2.

7. The learned Legal Aid Counsel for the applicants has submitted that in the end of June 2024, the applicant No. 1 was diagnosed with peripheral neuropathy, an ailment where the peripheral nerves are damaged, leading to symptoms like numbness, tingling and pain often on hands and feet. The applicant No. 1 had to remain busy in her treatment, making frequent visits to the medical practitioner for which she could not pursue the matter of filing the connected Regular First Appeal.

8. The learned Legal Aid Counsel for the applicants has further submitted

that on 03.07.2024, the applicant No. 2 again contacted the applicant No. 1 and told her that since he does not have any knowledge about the Court proceedings he requested her to pursue the appeal for both applicants jointly.

9. It is further submitted by the learned Legal Aid Counsel for the applicants that in the second week of July 2024 when the applicant No.1 contacted her trial court lawyer seeking legal advice in the matter, she was told that as the said counsel has only trial court experience and is not conversive with the procedure of the Appellate Court, she may engage some other counsel.

10. The learned Legal Aid Counsel for the applicants has further submitted that in the meanwhile the sister of the applicant No.1, namely, Dengchinni was diagnosed with cancer and the applicant No. 1 had to accompany her in her treatment from July 2024 till around September 2024. In support of his submission, the learned Legal Aid Counsel for the applicants has submitted the medical documents of the concerned ailment of the sister of the applicant No.1.

11. It is submitted by the learned Legal Aid Counsel that the applicants No. 1 received the summons from the Executing Court in Execution Case No. 91/2004 filed by the appellant.

12. Thereafter, as the applicants were unable to find a suitable counsel, both applicants approached the High Court Legal Services Authority on 06.09.2024 and prayed for legal aid services. Accordingly, the present Legal Aid Counsel was entrusted with their case.

13. The learned Legal Aid Counsel for the applicants has submitted that for the above mentioned reasons, delay of 91 days occurred beyond the prescribed period of limitation in filing the connected Regular First Appeal.

14. He submits that there is no *malafide* on the part of the applicants in approaching this Court by filing the connected Regular First Appeal beyond the

prescribed period of limitation. The learned Legal Aid Counsel for the applicants has submitted that in the connected Regular First Appeal, they have taken grounds like lack of jurisdiction of the Trial Court and failure on the part of the plaintiffs to make out a prima facie case and they are hopeful of getting a favorable order in the said appeal. He submits that under such circumstances, if the delay is not condoned and the cause of the applicants are thrown out at the very threshold; it would not serve the ends of justice. Hence, he prays for condoning the delay of 91 days in filing the connected Regular First Appeal. In support of his submission, the learned Legal Aid Counsel for the applicants has cited a ruling of the Apex Court in the case of “**Collector, Land Acquisition Anantnag and Another Vs. Mst. Katiji and Others**” reported in **(1987) 2 SCC 107**.

15. On the other hand, Mr. Jonathan Lalrintluanga, the learned counsel for the respondents has vehemently opposed the prayer of the petitioner for condoning the delay of 91 days in preferring the connected Regular First Appeal.

16. He submits that after the delivery of the impugned judgment, the present respondents have also filed an Execution Case, i.e., Execution Case No. 91/2004, in which notices were issued to the present applicants and they are aware of the pendency of the said Execution Case in spite of that they were negligent in approaching this Court for filing the connected Regular First Appeal beyond the prescribed period of limitation.

17. The learned counsel for the respondents has submitted that apart from mere stating in their application that the cyclone “Remal” was also a cause for their approaching this Court belatedly, no further materials are produced before this Court to substantiate their claim that they were prevented by the cyclone “Remal” from approaching this Court beyond the prescribed period of limitation.

18. He further submits that the applicants were negligent in approaching their counsels belatedly and this can only be turned as deliberate delay by them. He further submits that the applicants have also failed to provide any specific reason for which delay has been caused and they were negligent in approaching this Court belatedly. He further submits that under such circumstances no leniency should be shown to the applicants and the law of limitation should be made applicable in its full vigour so as to serve the ends of service. He submits that the applicants have failed to show that they were prevented by sufficient cause in approaching this Court after a delay of 91 days beyond the prescribed period of limitation. He has cited ruling of the Coordinate Bench of this Court in the case of "**Sh. Malswmtluanga Vs. Smt. Lalremzuali**" (Order dated 19.11.2024 in case No. I.A.(Civil) No. 101/2024) in support of his submissions. He has prayed for rejecting the prayer for condoning the delay of the applicants.

19. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available in the case record.

20. The Apex Court has observed in the case of "**Collector, Land Acquisition Anantnag and Another Vs. Mst. Katiji and Others**" (Supra) , as follows:

"3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] 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. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

21. In the instant case, by the impugned judgment, the present applicants were directed to pay a decretal amount of Rs. 7,37,065/- to the respondents along with an interest of 6% per annum from the year 2019 till realization,

therefore, it is apparent that any delay in preferring the appeal by the applicants will be only detrimental to their caused, therefore, *malafide* cannot be presumed on their part on account of their approaching this Court beyond the prescribed period of limitation.

22. The cause shown the applicants in their application for condoning the delay is supported by an affidavit. Thus, the respondents have opposed the contentions of the applicants, it is not stated by them that the applicants have resorted to falsehood. The cause of lack of cooperation from the counsel to whom the applicants had entrusted the brief for filing the appeal at the very first instance cannot be recorded as an insignificant cause. The negative impact on the transportation facilities due to the cyclone "Remal" cannot be brushed aside in toto and the said ground may also not be discarded as insignificant. The difficulty faced by the applicants in approaching this Court within the prescribed period of limitation for the reasons of serious ailment of the applicant No.1 and her sister can also not be regarded as insignificant.

23. We have seen that the Apex Court has observed in the case of "***Collector, Land Acquisition Anantnag and Another Vs. Mst. Katiji and Others***" (*Supra*) that making a justice oriented approach in dealing with applications for condonation of delay serve the ends of justice. This Court is also of the considered opinion that the applicants do not stand to benefit in any manner by resorting to delay in preferring the appeal rather they run a serious risk in doing so.

24. Under above circumstances, the cause shown by the applicants in their application for condonation of delay as well as in the additional affidavit filed by them, in this case, for approaching this Court beyond the prescribed period of limitation may be considered as sufficient cause within the meaning of Section 5

of the Limitation Act, 1963. Hence, in order to enable this Court to do substantial justice and also for the ends of justice, the delay of 91 days caused by the applicants in preferring the connected Regular First Appeal No. 37/2024, beyond the prescribed period of limitations, is hereby condoned.

25. List the connected RFA No. 37/2024 after one week on a date to be fixed by the Registry.

26. This Interlocutory Application is accordingly disposed of.

JUDGE

Comparing Assistant