



IN THE HIGH COURT OF SIKKIM GANGTOK

1. Civil Misc. Application No.7 of 2006
2. Civil Misc. Application No.8 of 2006
3. Civil Misc. Application No.9 of 2006
4. Civil Misc. Application No.10 of 2006
5. Civil Misc. Application No.11 of 2006
6. Civil Misc. Application No.12 of 2006



1. Ram Kumar Goyel,
S/O Lt. Bal Mukund Goyel
R/O Jorethang,
Represented by his Constituted Attorney
Shri Rajesh Kumar Agarwal,
2 ½ Mile, Sevoke Road,
P.O. Sevoke Road,
P.S. Bhaktinagar,
Distt. Jalpaiguri.
2. Sikkim Food & General Industries,
Private Limited,
Jorthang, South Sikkim.
3. The Board of Directors of
M/S Sikkim Food & Gen. Industries
Pvt. Limited, Jorthang Bazar,
South Sikkim.

..... *Applicants/Appellants*



Versus

1. Bhuwan Singh Pradhan
Respondent in CMA No.7 of 2006.
2. Krishna Bahadur Darjee
Respondent in CMA No 8 of 2006.
3. Tingey Bhutia
Respondent in CMA No. 9 of 2006.
4. Mani Kumar Gurung
Respondent in CMA No.10 of 2006.
5. Kumar Pradhan
Respondent in CMA No.11 of 2006.
6. Prem Kumar Gurung
Respondent in CMA No.12 of 2006.

All residents of Singtam ,
P.O. Singtam,
East Sikkim.



- For the Appellants : Mr. Ashok Banerjee, learned Senior Counsel assisted by Mr. Sudipto Majumdar and Mrs. Laxmi Chakraborty, learned Counsel.
- For the Respondents : Mr. N. Rai, learned Counsel assisted by Miss Jyoti Kharka, learned Counsel.



Date of Order : 26th September, 2006.

ORDER

A.P. Subba, J.

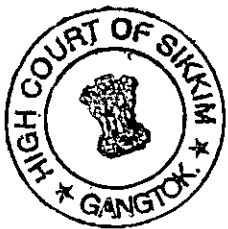
Since all the above Miscellaneous Applications arise out of similar facts and raise identical questions of law, they were heard together and are being disposed of by this common order.

2. All the above applications have been filed by one Shri R. K. Goyel, resident of Jorhang, South Sikkim and two (2) others u/s 5 of the Limitation Act, 1963, for condonation of delay of 510 days in filing appeals under Order XLI Rule 1 of the Code of Civil Procedure for setting aside the ex parte decrees dated 15.12.2003 passed by the learned District Judge, Special Division – II at Gangtok in Civil Suit Nos.5, 6, 7, 8, 9 and 10 of 2002.



3. It is not necessary to narrate facts of the case in detail for the purpose of disposing of the present applications. Suffice it to say that the Civil Suits Nos. 1 of 1992, 2 of 1992, 3 of 1992, 4 of 1992, 5 of 1992 and 6 of 1992 filed by each of the Respondents separately in the Court of the Ld. Civil Judge, (E) at Gangtok, for declaration that he was a government employee and not private employee of Sikkim Food Preservation Factory, Singtam, under the management of the Applicants/Appellants at the relevant time, that the letter of appointment issued by the Applicants/Appellants

was bad in law and liable to be set aside and that he was entitled to the payment of the difference of salary for the period between 2.7.1987 to 23.6.1995, was decreed on 19.6.1998. Appeal Nos. 7 of 2002, 8 of 2002, 9 of 2002, 10 of 29002, 11 of 2002 and 12 of 2002 preferred by the Applicants/Appellants before learned District Judge (E&N) at Gangtok were dismissed vide judgment dated 18.09.1999 and the decrees passed by the learned trial Court were duly confirmed. The Second Appeal Nos. 2 of 1999, 3 of 1999, 4 of 1999, 5 of 1999, 6 of 1999 and 7 of 1999 preferred before this High Court, impugning the above orders, also came to be dismissed. After the Second Appeals were dismissed by this Court, the Applicants/Appellants moved the Hon'ble Supreme Court. However, all the Special Leave Petitions met with the same fate. After the SLPs were dismissed, the Plaintiffs/Respondents put the decree in execution in the Court of the Ld. Civil Judge, East at Gangtok. However, the executing Court dismissed all the execution petitions on 30.6.2001 on the ground that the decrees being declaratory in nature were incapable of execution and the Plaintiffs/Respondents might file separate suits for the reliefs claimed in the execution petition. Writ Petition Nos. 46 of 2001, 47 of 2001, 48 of 2001, 49 of 2001, 50 of 2001 and 51 of 2001 filed by the Plaintiffs/Respondents thereafter before this High Court under Article 226 of the Constitution seeking certain directions to the State, were disposed of with some directions holding that the High Court was not the appropriate forum for the reliefs prayed for.





After the Writ Petitions were disposed of, the Plaintiffs/Respondents instituted fresh money suits in the Court of Ld. District Judge, Special Div.II, East at Gangtok in the year 2002 seeking the same reliefs which were sought in the Writ Petition and the execution petition. The said money suits were decreed ex parte on 5.12.2003 on default of the Applicants/Appellants to appear and to contest the suits. Against these ex parte decrees, the Applicants/Appellants moved applications under Order IX Rule 13 CPC for setting aside the same. However, the said applications were rejected by the learned District Judge, Special Division II after hearing on 15.9.2004. Thereafter, neither the Applicants/Appellants filed any appeal against the ex parte decree nor the decrees were put into execution for over one year, (1 year 2 months and 14 days to be precise). The Applicants/Appellants came to know of the execution petitions having been filed against them only when notices of the same were served on them on 7.2.2006. The appeals were then filed on 3.3.2006 along with the present applications for condonation of delay of 510 days.



4. In support of the prayer for condonation of delay, it is stated that the main reason for the delay in filing the appeals was the terminal illness of the mother of the Applicant /Appellant No.1. It is stated that she was admitted in Paramount Hospital Pvt. Ltd. at Siliguri and was under treatment there from the month of September 2003 till she breathed her last on 23.12.2003. It was



because of the said long illness and death of the mother of the Applicant /Appellant No.1 that he could not remain in touch with his Counsel for taking effective steps to defend the suit. It is further stated that the Applicant /Appellant No.1 being the eldest male member of the family, was confined to Siliguri for performing the last death rituals of the deceased mother, which lasted till the first week of January 2004. It was only after the completion of the last death rituals in the month of January 2004, that the Applicant /Appellant No.1 was free to take effective steps to defend the suit. However, to his ill luck, the suits were decreed ex parte in the meantime. When he contacted his Counsel in the first week of January 2004 for taking steps in this regard, it came to his notice that the Courts in Sikkim had been closed for winter vacation from 2nd January to 2nd February 2004 and his Counsel opined that the limitation would not run during the closure of the Courts, and accordingly, he waited till the reopening of the Courts for filing the necessary applications for setting aside the ex parte decrees. But when the Applicant /Appellant No.1 reached the District Court to present the applications on 2nd February 2004, he came to know that even though the Courts were closed for winter vacation, the offices were open and on coming to know of this, he filed the said applications for setting aside the ex parte decree along with applications for condonation of delay. These applications were rejected by the Ld. District Judge, Special Div.II vide orders passed on 15.9.2004. In the meantime,





the Applicants/Appellants No.1's only brother took ill with high blood pressure, sugar, pancreatitis, urea, etc. and had to be urgently shifted to Chennai for better management. Such illness of his brother and his treatment in a hospital located away from Sikkim, rendered the Applicant /Appellant No.1 helpless and being under the pressure of such adverse circumstances, he had to remain out of touch with his Counsel, thereby losing total track of the case. Over and above, the bona fide mistake committed by his Counsel on the question of period of limitation during the period of closure of the Courts also added to the delay. Hence, it was prayed that the delay might be condoned in filing the present Appeals.



5. In the replies filed by the Respondents, it was denied that the grounds mentioned by the Applicants/Appellants were sufficient cause within the meaning of Sec.5 of the Limitation Act. It was contended that the Applicants/Appellants had been negligent from the very beginning of the matter causing undue harassment to the Respondents. In view of such negligence, the Applicants/Appellants themselves were to be blamed for the delay in the case. It was also contended that the orders dated 15.9.2004 were not ex parte orders, in so far as, the same were passed in presence of the learned Counsel for the Applicants/Appellants. It was also contended that the Applicants/Appellants filed the present appeal only after the



Respondents put the decree in execution, which goes to show that it has been filed only with a view to avoid the payment of decretal dues. Accordingly, it was prayed that all the applications for condonation of delay may be rejected with exemplary cost.

6. At this stage, it is pertinent to mention that the Applicants/Appellants in the rejoinder affidavits filed by them in reply to the objections filed by the Respondents, raised further ground stating that the whole litigation was being looked after by the younger brother of Mr. Ratan Kumar Goyal and other agents engaged by him including the officers and staff connected with Food and General Industries Pvt. Ltd. The Appellant/Applicant No.1 having full faith in his brother did not feel the necessity of paying any personal attention to the matters. However, in November 2004 the brothers fell out with each other over certain personal disputes. Until this time, the Applicant/Appellant No.1 was confident that the whole affair was being looked after and managed properly by his brother and the Advocates engaged by him. However, such trust reposed by him on his brother was shattered when he came to know about the true state of affairs on receiving the show cause notices issued by the executing Court for attachment of his personal bank account and his personal properties on 7.2.2006. The Applicant/Appellant No.1 then contacted the lawyer who was in charge of the litigation and

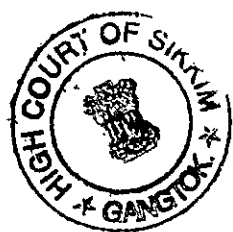




initiated proper steps to prefer appeals and finally filed the present Appeals on 2.3.2006.

7. The contention raised by Mr. N. Rai, the learned Counsel for the Respondents in this regard, is that, these grounds having not been taken in the original condonation applications earlier filed along with the applications under Order IX Rule 13 CPC were nothing more than after thoughts and cannot be taken into consideration.

8. Mr. Ashok Banerjee, learned Senior Counsel assisted by Mr. S. Majumdar and Mrs. L. Chakraborty, learned Counsel appearing on behalf of the Applicants/Appellants and Mr. N. Rai, learned Counsel assisted by Miss Jyoti Kharka, learned Counsel appearing on behalf of the Respondents were heard.

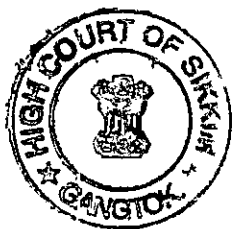


9. Mr. Ashok Banerjee, learned Senior Counsel submitted that even though there was long delay in filing the Appeals, the delay was caused by circumstances beyond the control of the Applicants/ Appellants. There was, according to him, no lack of diligence on the part of the Applicants/Appellants in pursuing their case. Over and above, it was also submitted by him that the Appeals filed by him raised arguable and important points of law, and in view of this, the cause shown by the Applicants/Appellants were sufficient cause for condonation of delay as prayed for. On the other hand, Shri N. Rai submitted that the inordinate delay in the filing of the present appeals was entirely due to negligence



and the lack of diligence on the part of the Applicants/Appellants, and, as such, no case has been made out for allowing the prayer for condonation of delay.

10. The short question that arises for consideration in all these matters is, whether the causes shown by the Applicants/Appellants for delay, coupled with the additional ground that the Appeal raises important questions of law can be accepted as a sufficient cause within the meaning of Sec.5 of the Limitation Act, and if so, whether the delay of 510 days can be condoned in the circumstances of the case.



11. Before proceeding to take up the above question, it would be relevant to note that the main grounds that have been taken in the present application are more or less the same as the ones already taken in the applications for condonation of delay earlier filed along with the applications under Order IX Rule 13 CPC in the Court of the Ld. District Judge, Special Division II, East at Gangtok. It might be recalled that the said Court had vide order dated 15.9.2004, rejected the said applications for setting aside the ex parte decrees along with the applications for condonation of delay. It might also be recalled that the Applicants/Appellants did not choose to prefer any appeal against the said order rejecting the application for setting aside the ex parte decree. The present appeal is one filed under Order XLI Rule 1 CPC.



12. In support of the above remedy chosen by him by way of Appeal under Order XLI R1 CPC instead of usual appeal against the order passed under Order IX Rule 13, the learned Sr. Counsel submitted that a defendant who has been proceeded ex parte has been given number of options under the Code and the options being concurrent, he could go for any of the options. The learned Counsel placed reliance on the decision of the Supreme Court in *Bhanu Kumar Jain vs. Archana Kumar & Another* (2005) 1 SCC 787. Based on the decision the learned Counsel submitted that a defendant in such case can file an application under Order IX Rule 13 CPC or prefer an appeal against the ex parte decree under Sec. 96 (2) of the Code or file a review or even institute a suit on the ground of fraud. All these remedies which are available to the Applicants/Appellants⁵ are concurrent, submitted the learned Counsel. It is his further submission that the different remedies can be availed of at the same time or one after another, except that in the event of an Appeal filed u/S 96 (2) CPC being dismissed, the defendant cannot fall back upon the provisions of Order IX Rule 13 CPC.



13. A perusal of the above decision goes to show that the learned Counsel is well supported by the law laid down therein, in so far as, it has been clearly observed that a party whose application under Order IX Rule 13 CPC for setting aside the ex parte decree has been rejected, has number of options, an appeal



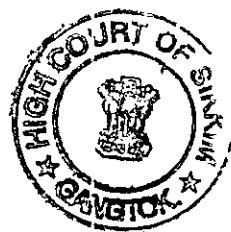
u/s 96 (2) of the Code being one of such options. It is the submission of the learned Counsel that he has chosen the option of filing an appeal u/S 96 (2) CPC so that he need not confine himself to the grounds which were already taken in the application under Order IX Rule 13 CPC. There can be no doubt that the present Appeal being an Appeal filed u/S 96 Clause (2), the grounds available to the Appellant are wider than the grounds which would have been available to the Appellant if he had preferred an Appeal against the order rejecting his application under Order IX Rule 13 CPC. Thus, no fault can be found with the filing of the present appeal.



14. This brings us to the question of sufficiency or otherwise of the cause shown. In this regard, it may be noted that the causes put forward by the Applicants/Appellants range from terminal illness of the mother of the Applicants/Appellants ultimately resulting in her death in a hospital in Siliguri, West Bengal, followed by performance of elaborate death rituals to illness of the Applicants/Appellants himself and his brother who was looking after the litigation in question on behalf of the Applicants/Appellants. The different causes also include the falling out of the Applicants/Appellants with his brother after November 2004. The question is, whether the above causes can be taken as sufficient cause within the meaning of Section 5 of the Limitation Act. Admittedly, the present Appeals have been filed



after a delay of 510 days. It was contended by Mr. N. Rai, the learned Counsel for the Respondents that the Appellants have not explained every day's delay in the condonation of delay application. It is true that the grounds of delay mentioned above do not amount to explanation of each and every day's delay. It is, however, settled law that the doctrine "every day's delay must be explained" does not mean that it should be an explanation covering every hour's delay or for that matter every second's delay. As per the law laid down by the Hon'ble Supreme Court in *Collector, Land Acquisition, Anantnag & Another vs. Mst. Katiji & Others - AIR 1987 SC 1353*, the doctrine "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. It is relevant to quote the following observation made by the Apex Court in the above case :-



- "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 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 non-deliberate delay.

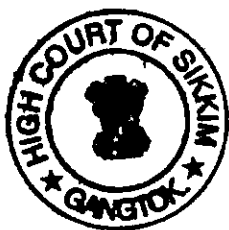
5. There is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so." (emphasis supplied).

15. It is thus clear that the explanation put forward in an application for condonation of delay need not cover every day, every hour or every second's delay. The doctrine, as held above has to be applied in a rational common sense pragmatic manner.

16. Further, it is by now the settled principle of law that while considering the question of condonation of delay a reference to the merits of the Appeal would be desirable. In ***Ram Nath Sao vs. Gobardhan Sao reported in AIR 2002 SC 1201*** the Apex Court has observed as follows:-

"Acceptance of explanation furnished is the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party.However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merits.(emphasis supplied).

The observation made by the Rajasthan High Court in ***Urban Improvement Trust vs. Poonam Chand AIR 1997 Rajasthan***





134 deserves mention in this regard. The relevant observation is as follows:-

"19. Now it must be taken to be well settled principle of law that before rejecting applications under Section 5 of the Indian Limitation Act and dismissing appeals as barred by lapse of time, the Courts of law are required to put a glance as a condition precedent on the merits of the appeals and unless the appeals are found to be hopelessly devoid of merits ordinarily efforts should be made to decide the appeals on merits." (*emphasis supplied*).

17. The above view finds full support from the law laid down by the Hon'ble Supreme Court in the recent decision rendered in ***Divisional Manager Plantation Division Andaman & Nicobar vs. Munna Barrack & Others AIR 2005 SCW 109***



wherein it has been observed that where serious questions of law are raised in the Appeal, the Court should take a liberal view on the application for condonation of delay.

18. It is, therefore, well settled by now that the explanation put forward in the application for condonation of delay should be considered along with the merits of the Appeal and if serious points of law are prima facie found to have been raised in the Appeal, the application for condonation of delay is not to be lightly brushed aside taking into account only the length of delay in the matter. A reference to the merits of the Appeal for the limited purpose of ascertaining whether arguable points of law have been raised would invariably be desirable for advancing the cause of



substantial justice while considering the question of condonation of delay u/Sec. 5 of the Limitation Act.

19. We may, therefore, glance through the relevant pleading to ascertain if the Appeals raise any serious question of law. A perusal of the memorandum of appeal along with the accompanying annexures, would go to show that the Plaintiffs/ Respondents in the first suits filed before the Court of Ld. Civil Judge, East, sought for declaration that they were government employees under the Government of Sikkim, that their status as government servants could not be unilaterally changed at the will of the Defendant/Applicants/Appellants, that the letter of appointment issued by the Appellants was liable to be set aside, that they are entitled to get salary and allowances at par with other government servants and that they will be entitled to claim the difference of salary for the period from 2.7.1987 to 23.6.1995. It appears that, the Plaintiffs/Respondents in the said suits only claimed the above declaration and did not claim the consequential relief of recovery of difference of salary in the same suit contrary to the provisions of Order II Rule 2 CPC. The plea regarding non-compliance of Order 2 Rule 2 CPC taken by the Applicants/Appellants was duly incorporated in issue No.2 which reads as follows :-

- "2. "Whether the instant suit is hit by the provisions of Order II Rule 2 of the Code of Civil Procedure."





20. Further, it is seen that the trial Court has not returned any finding on the above issue while disposing of the suits ex parte. The impugned orders show that two other issues along with the above issues were also not decided. While refraining from giving any decision on these three issues, the learned Court simply observed that these three issues did not crop up during the trial, since the said Defendants were proceeded ex parte. The three issues are as follows :-

ISSUES

- "1. Whether the claim of the plaintiff is barred by the Law of Limitation?
2. Whether the instant suit is hit by the provisions of Order 2 Rule 2 of the Code of Civil Procedure?
3. Whether the plaintiff was compelled to join under the defendant?
....."



Paragraph 6 of the impugned judgments which deals with the above issues states as follows :-

"The Defendants having been proceeded ex parte, these issues did not crop up during trial."

21. It is the case of the Applicants/Appellants that Order XIV Rule 2 CPC mandates Court to pronounce judgment on all the issues subject to the provisions of sub-rule (2). However, in the present case, the learned Court failed to comply with the above specific provision. Thus, it is clear that the Applicants/Appellants have raised the following three legal issues of importance :-



1. Bar of limitation.
2. Non-compliance with the provisions of Order II Rule 2 by the Respondents in their pleadings in the suit.
3. Non-compliance with the provisions of Order XIV CPC Rule 2 by the learned trial Court.

Relying on the decision of the Hon'ble Supreme Court in *State of M.P. vs. State of Maharashtra* (1997) 2 SCC 288, *M/S Bengal Waterproof Ltd. and Another vs. M/S Bombay Waterproof Manufacturing Co. & Another* AIR 1997 SC 1398, *Smt. Phulpati Devi & Another vs. Parmeshwar Rai & Others* AIR 1981 Patna 77, *Kunjan Nair Sivaraman Nair vs. Narayanan Nair & Others* AIR 2004 SC 1761 and few other decisions, the learned Counsel for the Respondents contended particularly in regard to issue No.2 above that the Defendants in order to raise the plea of Bar of Order 2 Rule 2 CPC must file in evidence the pleadings of the previous suit and since it was not done, the provisions contained in Or.2 R2 CPC was no bar. Even if it were so, it was his contention that the Respondents have obtained the required leave from the Executing Court.



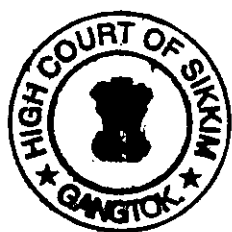
22. While the above decisions cited by the learned Counsel do go to show that filing of the pleadings of the previous suit in evidence is a requirement for raising the issue of non-compliance of Order 2 Rule 2 CPC, we cannot loose sight of the fact that the Respondents had allegedly failed to seek the consequential relief of recovery of the difference of salary in the suits filed by them before the Court of learned Civil Judge. The



only contention sought to be raised by the learned Counsel for the Respondents, is that, a Plaintiff under the provisions of sub-rule (3) of Order 2 Rule 2 CPC can file a separate suit later, even on the relinquished portion of the claim, if he has taken the leave of the Court in the earlier suit. In the present case, it was his submission that such leave had been granted for filing a separate suit by the executing Court while disposing of the execution petition and the requirement of obtaining leave stands complied with.

23. It is clear from the above that the issues that have been raised in the Appeals are pertinent, in so far as they raise the issue of non-compliance with the mandatory provisions of law applicable to the case. The question, however, is whether these issues, which touch upon the merits of the case, can be taken into consideration in an application u/S. 5 of the Limitation Act. It is amply clear from the decision already cited above, that it is now well settled that a reference to the merits of the case, so as to find out as to whether any serious questions of law is involved in the Appeal, can be made while disposing of an application for condonation of delay.

24. One more decision cited on the point by Mr. Banerjee, the learned Senior Counsel, is a Division Bench decision of this Court rendered in *Principal Secretary, Transport Department, Government of Sikkim, Gangtok vs. Smt. Narmaya Das – Civil Misc.Application No.6 of 2004* decided on 7th June, 2005. In this case, a Division Bench of this Court, relying on several decisions





of the Apex Court and High Courts held that, in considering application for condonation of delay, merits of the Appeal can be looked into keeping in view the object underlying Sec.5 of the Limitation Act which is to enable the Court to do substantial justice. Paragraph 12 of the said Order which is relied on by the learned Counsel is as follows:-

"12 Further, it also becomes clear from the above that where arguable points of facts and law are involved the explanation furnished should not be brushed aside taking hyper technical view of the matter. It is indeed well-established that merits of the case may also be taken into consideration in excusing the delay.. .."



The submission of Mr. Rai in regard to applicability of the above Division Bench decision to the case in hand is that, it does not apply to it. The main ground advanced by the learned Counsel supporting his objection are that, in the above Division Bench case, an important point as to whether a gazetted officer can be treated as "workman" under the provisions of *Workmen's Compensation Act 1923* was involved, whereas in the present case, no such important point is involved. In the second place, it was pointed out that the Appellant in the said case, before the Division Bench, was a government department, and such being the case some latitude was extended to it, ~~which cannot be done~~ in the present case, as because the Appellant is a private party. In the third place, it was pointed out that the decision of the Division Bench was based on substantial justice, and as a consequence of which the delay was condoned, but in the present case, the ends



of substantial justice would be met if the application for condonation of delay is rejected.

25. There is no doubt that the above aspects of the matter were taken into consideration by the Division Bench while deciding the question of condonation of delay. However, what was held by the Division Bench, as already noted above, being that, merit of the case can also be looked into when arguable points of law are raised in the case, it would be wrong to say that the decision would apply only when the Appellant is government department or only when the question of substantial justice arises. For this reason, the contention of Mr. Rai that the Division Bench decision does not apply to the facts of the present case cannot be countenanced.

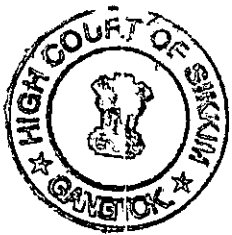


One additional ground taken by the learned Counsel is that the Division Bench in the above stated case only relied on the old decision of the Apex Court *in Collector, Land Acquisition Anantnag & Anr. vs. Mst. Katiji & Ors. reported in AIR 1987 SC 1553* without taking note of the later decision on the point. It is his contention that the Apex Court in the later decision rendered in *P. K. Ramachandran vs. State of Kerala & Another - AIR 1998 SC 2276* has laid down that the law of limitation is to be applied with its full rigour prescribed by the statute and Courts have no power to extend limitation on equitable grounds. In view of this later decision, it is his submission that the Division Bench decision cannot be followed. There is no doubt that the above later

decision referred to by the learned Counsel lays down that the law of limitation has to be applied with its rigour prescribed by the statute but we cannot loose sight of the fact that the above observation was made by the Apex Court in a case where delay was condoned by the High Court without recording satisfaction that the explanation for delay was either reasonable or satisfactory. The decision, therefore, cannot be taken as laying down that delay cannot be condoned on any account or that merits of the Appeals can never be looked into while considering condonation applications. The still later decisions rendered by the Apex Court in *Ramnath Sao vs. Gobardhan Sao AIR 2002 SC 1201 (supra)* and in *Divisional Manager, Plantation Division, Andaman and Nicobar Islands vs. Munnu Barrick and Ors. reported in AIR 2005 SCW 109* already cited hereinbefore make it amply clear that the explanations furnished in condonation applications should not be rejected taking a hyper technical view of the matter when stakes are high and/or arguable points of facts and law are involved in the case. Thus, the submission made by the learned Counsel on this account cannot be considered as having any merit.

26. The above decisions, therefore, make it amply clear that where serious questions of law are raised, the Court should take a liberal view on the application for condonation of delay.

27. Now coming to the length of delay involved in the present case, it may be recalled that there has been a delay of





510 days. The submission of learned Counsel for the Respondents in this regard, is that, such a long delay cannot be condoned. This submission, to say the least, runs counter to the guidelines laid down by the different decisions. It has been held in catena of decisions that quantum of delay has no direct nexus with the sufficiency of cause. In this regard I find it sufficient to refer to the majority view in ***Municipal Corporation of Ahmedabad vs. Voltas Ltd. and etc. reported in AIR 1995 Gujarat 29*** which is pertinent. The view is as follows:-



"Whether the delay is for a short period or a long period is of no consequence. If sufficient cause is shown long delay can be condoned and if no cause is shown even delay for a short period may not be condoned."

28. It is thus clear that a reference to the merits of the case while considering the question of condonation of delay would not be out of place and where it is found that arguable points of facts and law are involved in the Appeal, the explanation furnished should not be brushed aside taking hyper technical view of the matter.

29. We have already come to the conclusion above that the Appeal raises arguable points of law, which need to be adjudicated by the Court in the interest of justice. Thus, on a consideration of the facts and circumstances of the case in the light of the legal position as highlighted above, this Court is of the opinion that the cause shown by the Applicants/Appellants taken



together with the important legal points raised in the Appeal make out a case for condonation of the delay as prayed for and the same must be allowed.

30. Accordingly, all the six applications for condonation of delay are hereby allowed subject, however, to payment of Rs.5000/- (Rupees Five Thousand) only, as cost to the Respondents in each of the above applications.

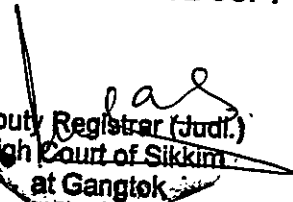
Sd/-

(A. P. Subba)

Judge

26/09/2006

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Deputy Registrar (Judl.)
High Court of Sikkim
at Gangtok

