

IN THE HIGH COURT OF TRIPURA
AGARTALA

C.M. APPL. 499 of 2012 IN RFA 16 OF 2012

Shri Palash Chandra Saha
S/O. Lt. Sudhir Chandra Saha,
Resident of Santipara, Agartala,
P.O. – Agartala – 799001,
Police Station – East Agartala,
District – West Tripura.

..... **Petitioner**

- *Vs* -

1. Smti. Minati Samajpati
W/O. Lt. Hemanta Kumar Samajpati.
2. Smti. Gitasree Samajpati,
W/O. Late – Tuhin Samajpati.
3. Smti. Sunetra Samajpati (Minor),
D/O. Late Tuhin Samajpati,
Represented by Smti, Gitasree Samajpati.
4. Shri Ahin Samajpati
S/O. Lt. Hemanta Kumar Samajpati.
All are residents of 15, Sakuntala Road,
Agartala, Post Office – Agartala – 799001,
Police Station – West Agartala,
District – West Tripura.
5. Smti. Sukla Chakraborty (Samajpati),
W/O. Shri Dipak Chakraborty,
Resident of Nabadarsha Co-operative Society,
House No. R/5, Post Office – Nilachal,
Kolkata – 700051,
District – North 24 Paraganas,
West Bengal.
6. Smti. Sharmila Bhattacharjee (Samajpati),
W/O. Shri Debesh Ranjan Bhattacharjee,
Resident of Bardowali, Agartala,
P.O. – Arundhutinagar,
PIN – 799003,
Police Station – West Agartala,
District – West Tripura.

7. Sri Ganesh Chandra Paul,
S.O. Late Jogesh Chandra Paul,
Resident of Yamuna Park, Ward No. IV,
Post Office – Golaghat Town, PIN – 785621,
Police Station – Golaghat Town,
District – Golaghat, Assam.

..... **Respondents.**

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Petitioner : Mr. D. Chakraborty, Advocate.
Mr. H. Laskar, Advocate.

For the respondents : Mr. S.M. Chakraborty, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.
Ms. P. Chakraborty, Advocate.
Mr. B.S. Bhowmik, Advocate.
Ms. D. Das, Advocate.

Date of hearing & : 23.04.2013.
delivery of Judgment
& order

JUDGMENT & ORDER (ORAL)

The word 'limitation' in its legal and popular sense, refers to the time within which an action may be brought, or some act done, to preserve a right. In its ordinary sense, it means restriction or circumspection. Time is the essence of life. By lapse of time, one acquires a right and at the same time, a right extinguishes due to lapse of time. One is expected to do a particular act or thing in time either fixed by law or by nature. Where the law has prescribed a time limit to take certain action within a certain specified period of time, it has to be taken, by a party desirous to take action, within such specified period, failing which the party will lose his right to take action subject to any

exception prescribed by the statute. The utility of a statute of limitation has never been a matter of doubt or dispute. It has been said that the statute of limitation is a statute of repose, peace and justice. It is one of repose because it extinguishes stale demands, and quiets title. In the words of John Voet, controversies are restricted to a fixed period of time lest they should become immortal while man are mortal. It secures peace as it ensures security of rights; and it secures justice, as by lapse of time evidence in support of rights may be destroyed. There can thus be no doubt that it rests on sound public policy. The operation of the law of prescription has been explained by Lord Plunket in a striking metaphor. He stated that Time holds in one hand a scythe and in the other, an hour glass. The scythe mows down the evidence of our rights, while the hour glass measures the period which renders that evidence superficial. Commenting on this, a learned author observes that the metaphor could have been completed by adding, so far as India is concerned, that a framework of the hour-glass, would certainly decay, the glass to be broken, and send escape.

2. By filing the present application under Order XLI Rule 3-A of the Code of Civil Procedure (for short, CPC) read with Section 5 of the Limitation Act, 1963, the appellant-petitioner sought for condoning the delay of 308 days in presenting a memorandum of appeal before this Court under Section 96 of CPC against the Judgment and Decree dated 8th August, 2011 passed

by learned Civil Judge (Sr. Div.), Court No. 1, West Tripura, Agartala in Title Suit No. 13 of 2007.

3. It is contended by the appellant-petitioner that the impugned Judgment and Decree appealed against was delivered by the Trial Court on 8th August, 2011. Application was filed by the advocate's clerk of the petitioner for certified copy of the Judgment and Decree, on 15.09.2011. It was ready for delivery on 24.09.2011. According to the petitioner, the period of limitation for preferring the appeal expired on 15.11.2011, but, the appeal could not be filed within the specified period and it was filed only on 19.09.2012 i.e. after 308 days of the expiry of period of limitation.

4. The grounds for the delay in preferring the appeal has been assigned in Paras 3, 4 and 5 of the petition, which reads as follows:-

"3. That the appellant-petitioner is a businessman and he remains out of station almost throughout the year and at the same time his minor son is studying at Deradhun, Uttarakhand and the appellant-petitioner also visits Deradun time and again for keeping contact with his minor son and in connection with urgent matters the appellant-petitioner returns back to Agartala for a short period and as such it was not possible for him to keep contact with his Ld. Advocate for preparation of memorandum of appeal regularly.

4. That the appellant-petitioner returned back from Deradhun on 13-9-2012 and contacted with his Ld. Advocate on the next day and the memorandum of appeal was prepared and has been presented today.

5. That the appellant-petitioner is a layman and he is not conversant with and aware of the legal procedure and he has also no idea about the period of limitation within which the memorandum of appeal should be presented and because of

ignorance of legal procedure the appellant-petitioner could not take immediate step for preferring appeal.

The appellant-petitioner was always diligent in conducting the original suit and because of his pre-occupation in his business matter outside Tripura, and because of his ignorance about the legal procedure he could not contact with his Ld. Advocate in due time regularly and in the result presentation of the memorandum of appeal has been delayed and as such delay in preferring the appeal may be condoned."

5. The opposite party by filing a written objection inter alia contended that the reason for the delay assigned by the appellant-petitioner is altogether bogus, frivolous and not acceptable at all. A valuable right of the respondents have already been accrued because of the decree of dismissal passed by the Trial Court and since the appellant-petitioner failed to assign any convincing reason for the delay in filing the appeal, the right already accrued in favour of the respondents-opposite parties should not be disturbed allowing the filing of appeal which will unnecessarily put the opposite parties in harassment in addition to cost of litigation.

6. Learned counsel, Mr. D. Chakraborty appearing for the appellant-petitioner submits that the appellant is a businessman of Agartala and in course of his business, he had to visit different parts of the country and also he has to take care of his minor son staying at Dehradun and therefore, he could not take step in time to file the appeal and the limitation, therefore, expired. It was not intentional or deliberate and the delay is required to be condoned so that the claim of the plaintiff, which he lost in the Trial Court,

may be agitated on merit and decided by the superior court. He has also submitted that there is no mala fide in filing the appeal after period of limitation and the respondents will not suffer in any manner if the delay is condoned.

7. On the other hand, appearing on behalf of the respondents, learned senior counsel, Mr. S.M. Chakraborty submits that the appellant-petitioner as plaintiff brought a bogus suit having no merit at all. The suit has been dismissed on merit by the Trial Court. The appellant-petitioner is/was quite aware of the fate of his suit and therefore, did not take any step to file the appeal in time. The reason assigned for the delay is casual and mechanical. If, accepting such reason, the delay is condoned, the purpose of law of limitation shall frustrate.

He has also submitted that since a right has already been accrued in favour of the respondent-opposite parties because of the dismissal of suit of the plaintiff-petitioner, which is perfected by lapse of time, should not be allowed to be disturbed again. The petitioner only with a view to harass the respondents and to cause monetary loss filed the present appeal after such a long delay.

8. The petitioner practically, assigned no cogent reason for the delay in presenting the memorandum of appeal. A bare reading of the petition clearly represents the casual approach made by the petitioner. The impugned Judgment and Decree was

passed on 8th August, 2011. The advocate's clerk applied for certified copy on 15.09.2011. If, the petitioner was aggrieved with the Judgment and Decree and was serious to prefer an appeal, he would at once, make an application for the certified copy of the Judgment and Decree. No reason assigned as to why the petition for certified copy was filed after 37 days of the Judgment and Decree. According to the petitioner, the certified copy was ready for delivery on 24.09.2011, but, no statement made as to when the copy was received by the petitioner and what the petitioner has done till 15.11.2011. To explain the delay, the petitioner stated that he had to go out of the State for the purpose of his business and also to visit his son at Dehradun. It shows that the petitioner was not at all serious for filing an appeal and therefore, did not attach any importance in the matter rather given importance to his business and other matter and that has also not been explained as to at which period of time he went out of the State for the purpose of business and/or for visiting his son. The application has been made assigning some casual and mechanical ground as a matter of routine as if whatever is stated as a reason for the delay, it has to be accepted by the Court.

9. According to learned counsel, Mr. D. Chakraborty, the reason assigned by the petitioner is genuine and there was no intentional or deliberate lapse on the part of the petitioner and that the delay should be condoned for fair ends of justice.

10. On the contrary, Mr. S.M. Chakraborty, learned senior counsel for the respondent-opposite parties submits that the reason assigned for the delay is superficial, mechanical and just an eyewash having no root at all and it does not deserve any consideration in the eye of law. It shows a sheer and deliberate lapse or negligence on the part of the petitioner and so, the delay should not be condoned.

11. The Supreme Court in the case of ***Sarpanch, Lonand Grampanchyat vs. Ramgiri Gosavi and another*** reported in ***AIR 1968 SC 222*** has observed:-

"The discretion to condone the delay like other judicial discretions must be exercised with vigilance and circumspection according to justice, common sense, and sound judgment. The discretion is to know through law what is just. The words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence nor in action nor want of bona fides is imputable to the application."

12. In the present case, as it appears, the petitioner approached the Court seeking condonation of delay in a most casual manner. The word 'sufficient cause', according to law, is to receive a liberal construction, but, that does not mean that whatever explanation or reason has been assigned has to be accepted. The word 'sufficient cause' has not been defined anywhere in the statute. It would depend on the facts of the particular case as to whether the cause assigned satisfy the judicial conscience of understanding, to discern between falsity and

truth, between wrong and right, between shadows and substance between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. "Discretion" means, when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself. Judicial discretion must be exercised according to common sense and according to justice. There should not be any miscarriage of justice while exercising judicial discretion.

In the case at hand, exercise of discretion in favour of the petitioner, in my considered opinion, will cause gross miscarriage of justice since the reason assigned for the delay does not at all convince the judicial mind of the Court.

13. In the case of ***Shakuntala Devi Jain vs. Kuntal Kumari and others*** reported in ***AIR 1969 SC 575: (1969) 1 SCR 1006***, the Supreme Court has held that "***Section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a***

liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona-fides is imputable to the appellant."

14. The Supreme Court in the case of ***G. Ramagowda v. Special Land Acquisition Officer*** reported in ***AIR 1988 SC 897*** has held that ***"each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay"***.

15. In the case of ***Apangshu Mohan Lodh v. State of Tripura*** reported in ***(2004) 1 SCC 119***, the Apex Court has held that *the power of condonation is discretionary and has to be liberally construed.*

16. In the case of ***Ram Nath Sao v. Gobardhan Sao*** reported in ***AIR 2002 SC 1201***, the Apex Court has held—

"The expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. Whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a

straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. However courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high, causing enormous loss and irreparable injury to the party against whom the list terminates and defeating valuable right of such a party to have the decision on merit. While considering the matter the courts should strike balance between the resultant effect of the order it was going to pass upon the parties either way"

17. In the case of ***State of Nagaland v. Lipok AO*** reported in ***(2005) 3 SCC 752 : AIR 2005 SC 2191***, the Supreme court has observed that "***the proof by 'sufficient cause' is a condition precedent for exercise of the extraordinary discretion vested in the court. The Court has further observed that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Apex Court also took cognizance***

of the usual bureaucratic delays which takes place in the functioning of the State and its agency/instrumentalities.”

18. In the case of ***Balwant Singh (Dead) vs. Jagdish Singh and Others*** reported in ***(2010) 8 SCC 685***, the Supreme Court has held:-

Liberal construction of the expression “sufficient cause” is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. The expression “sufficient cause” implies the presence of legal and adequate reasons. The word ‘sufficient’ means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.

Even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of its acting vigilantly.

19. In view of the discussions made above, I find no reason at all to exercise judicial discretion of this Court in favour of the petitioner to condone the delay, as prayed for.

20. Accordingly, the petition seeking condonation of delay stands dismissed.

JUDGE