



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 19th APRIL, 2017

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No. 1 of 2016
in

RFA No. 16 OF 2016

Petitioner/Appellant : Shri Tara Kumar Pradhan,
S/o Late Krishna Prasad Pradhan,
R/o Phewa Busty,
Gangtok,
East Sikkim.

Versus

Respondent : Shri Yuba Kumar Pradhan,
S/o Late Krishna Prasad Pradhan,
R/o Deorali,
Gangtok,
East Sikkim.

Appearance

Mr. Jorgay Namka, Ms. Panila Thengh, Ms Pema Bhutia, Mr. Karma Sonam Lhendup and Mr. Tashi D. Sherpa, Advocates for the Petitioner/Appellant.

Mr. Sudesh Joshi and Mrs. Manita Pradhan, Advocates for the Respondent.

O R D E R

Meenakshi Madan Rai, J.

(1) This Petition, purportedly for condonation of delay has been filed under Rules 16, 17 and 18 of the Sikkim High Court (Practice and Procedure) Rules 2011, seeking condonation of delay of 59 days in filing the RFA.

(2) For clarity in the matter, we may briefly advert to the facts leading to the RFA and the instant Petition. Civil Misc. Case



No. 15 of 2011 was registered in the Court of the learned District Judge, East District at Gangtok, on a Petition filed by the Respondent herein, for letters of administration under Section 278 of the Indian Succession Act, 1925, duly contested by the Petitioner/Appellant herein. The learned District Judge while allowing the Petition held that the Will in dispute was a valid Will.

(3) Aggrieved by the finding in the said Order, the Petitioner/Appellant (hereinafter 'Petitioner') preferred an RFA and filed it for the first time on 12.08.2016 before the Registry of this Court, which was however not listed on account of non-payment of Court Fees. After rectifying other defects pointed out by the Registry, the matter was refiled on 15.10.2016 but once again not listed for non-payment of Court Fees. The issue was raised before the Registrar, where the learned Counsel for the Petitioner sought to explain that as the Petitioner was the Respondent No.1 before the learned Trial Court and as the RFA was being preferred by him, hence he was not required to pay the Court Fees. Regardless, the Registry insisted on payment of Court Fees. Consequently, learned Counsel for the Petitioner after conferring with the Petitioner on the matter decided to pay the Court Fees, during the course of which an entire month elapsed. The RFA was then filed on 22.10.2016, hence the delay of 59 days. That, the Petitioner *bona fide* believed that the steps taken by him and his Counsel were correct and came to learn of the anomalies on 21.10.2016. On being advised, the instant Appeal was filed on 22.10.2016, his case being strong on merits, hence the prayer for condoning the delay of 59 days.

(4) *Per contra*, learned Counsel for the Respondent while drawing the attention of this Court to the provisions of Order XLI Rule 3A of the Code of Civil Procedure, 1908 (hereinafter 'the CPC'), urged that the Law clearly lays down that when an appeal is presented after expiry of the period of limitation, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies, to satisfy the Court that he



had sufficient cause for not preferring the appeal within such period. It was put forth that Article 116 of the Limitation Act, 1963 (hereinafter 'the Limitation Act'), prescribes a period of 90 days for filing of the RFA, whereas the Appeal was filed much later and therefore, ought to be accompanied by an application under Section 5 of the Limitation Act. On the question of Court fees, it was contended that the Sikkim Court Fees and Stamps on Documents Act, 1928 (hereinafter 'the Act') at Rule 5, clearly prescribes that Court Fee in Appeals shall be charged as in the original court and the amendments in the Act in the year 2002 and 2013, also reiterates the same. Hence, the grounds agitated by the Petitioner that he was the Respondent before the learned Trial Court and was consequently not required to deposit the Court Fee in Appeal has no legs to stand. It is evident that he chose not to file the Court Fee despite the Registry clarifying the position to him, in such a circumstance he cannot, therefore, feign ignorance of the Law and seek reliefs, as ignorance of Law is no excuse. It was further submitted that no material particulars pertaining to payment of Court Fees have been reflected in the Petition and the RFA. Attention of this Court was also invited to the fact that the impugned Order was passed on 14.06.2016, however, in Paragraph 5 of the RFA, under the caption "GROUNDS", the Petitioner has failed to reveal the date on which the Application was made for certified copy of the impugned Order and has merely stated that the copy was made ready on 14.07.2016. On the other hand, a perusal of the details reflected in the rubber Stamp affixed by the Head Copyist, District & Sessions Court, East Sikkim at Gangtok, reveals that the Petitioner applied for the impugned Order only on 07.07.2016, almost a month after the Order was pronounced and a copy thereof was made ready on 14.07.2016. Therefore, the Petitioner has attempted to mislead the Court by the statements. Hence on the aforesaid grounds, the Petition deserves a dismissal.

(5) To buttress his submissions, learned Counsel for the Respondent relied on ***Esha Bhattacharjee v. Managing Committee***



of Raghunathpur Nafar Academy and Others : (2013) 12 SCC 649
and ***Basawaraj v. Land Acquisition Officer : (2013) 14 SCC 81.***

(6) In response, learned Counsel for the Petitioner held that Article 116 of the Limitation Act, prescribes a limitation of 90 days, whereas the Appeal was in fact initially filed within 62 days.

(7) The rival contentions of learned Counsel were heard at length and have been given due consideration and the impugned Order perused.

(8) What emanates from the gamut of facts placed before this Court is that the impugned Order was passed on 14.06.2016. Evidently, the Petitioner did not apply for a certified copy on the same date but did so only on 07.07.2016, as revealed from the rubber Stamp details of the Head Copyist of the District Court and the copy was ready on 14.07.2016. In the first instance, it is rather unusual that the Petitioner failed to disclose the date of Application for certified copy of the impugned Order dated 14.06.2016, which therefore appears to be an underhand conduct. Be that as it may, even assuming that the period of limitation began to run only from 14.7.2016, it is apparent that the delay has also not been calculated correctly. It has been argued that the RFA was initially filed within the period of limitation, i.e. 62, but the defects unearthed by the Registry led to the delay. This, I am afraid is no ground, as an application or RFA cannot be deemed to be filed until all defects are cured. The date of filing will be the date when the petition is placed before the Registry sans defects and not prior to that. Therefore, this argument being fallacious is not tenable.

(9) Now coming to the provisions of the Sikkim High Court (Practice and Procedure) Rules 2011 (**hereinafter 'P.P. Rules'**) invoked by the Petitioner to condone the delay, Rule 16 deals with the Court's power to dispense with compliance with the Rules and reads as follows;



"16. Courts Power to dispense with compliance with the Rules:- The Court may, for sufficient cause shown, excuse the parties from **compliance with any of the requirements of these Rules** and may give such directions in matters of practices and procedure as if (sic, it) may consider just and expedient."

A bare perusal of Rule 16 would go to show that it merely empowers the Court to permit dispensing with the provisions of the Rules on sufficient cause being shown but does not clothe the Court with powers to waive statutory provisions and is, therefore, of no assistance to the case of the Petitioner.

(10) Rule 17 of the P.P. Rules, reads as follows;-

"17. Power of Court to make appropriate orders:- An application to be excused from compliance with the requirements of any of the rules shall, in the first instance, be placed before the Registrar who may without interfering or dispensing with any mandatory requirements of the rule shall place before the court for appropriate order thereon, on a convenient day."

This Rule, therefore, requires an application to be placed before the Registrar for exemption from compliance with the requirements of any of the P.P. Rules. However, in the instant matter, the records do not reveal any such application being placed before the Registrar as required or subsequent thereto before the Court for appropriate order. A bald statement of the Petitioner to this effect will not suffice, in the absence of any document or written order to fortify the argument.

(11) Rule 18 of the P.P. Rules, reads as follows;

"18. Inherent power of the Court not affected:- Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

Suffice it to reiterate that this Rule extends a latitude to the Court to exercise its inherent powers over and above the Rules, either for the ends of justice or to prevent abuse of the process of the Court.



(12) That, having been said on perusal of the Report of the Registry dated 22.10.2016, it has been recorded therein that "*.....As the Appeal has been filed beyond the period prescribed for amendment as required under Rule 7 of the Sikkim High Court (Practice and Procedure) Rules 2011, and further some defects still existed therein, it was accordingly brought to the notice of the learned Registrar. As directed by the learned Registrar, the Appeal may be registered subject to the filing of application for condonation of delay and further, subject to the correction of the defects.....*".

(13) This direction is lucid and easy to follow. Surely, the Counsel for the Petitioner could not have been misled by the directions of the Registrar who had issued a categorical direction that an application for condonation of delay was to be filed by the Petitioner. Apart from failing to comply with the directions of the Registrar, the Petitioner cannot also circumvent the statutory provisions of law *viz.*; filing of an application under Section 5 of the Limitation Act and instead seek condonation of delay based on the Rules of this Court.

(14) I am also inclined to agree with the submissions of learned Counsel for the Respondent that Order XLI Rule 3A of the CPC is specific *inasmuch* when a prayer for condonation of delay is made, the correct provision of law would be under Section 5 of the Limitation Act. Besides, on careful perusal of the Petitioner's Application, it is evident that the Petition has been drafted in a lackadaisical manner with nary a care to details of the averments made, as the application states the delay to be 30 days, whereas on the verbal submissions of learned Counsel for the Petitioner, the delay was said to be of 59 days. That apart, Paragraph 2(viii) and Paragraph 5 of the Application of the Petitioner are contradictory and read as follows;

"2.

(viii) That the Appellant's Counsel therefore brough(sic) the same to the notice of the Appellant, after which they deliberated on the said subject and once again came back to the Registry, High Court of Sikkim and hence the entire process took almost



a month, after which they approached the High court of Sikkim and filed the said RFA today.”
.....

5. That the Appellant who came to learn of the above anomalies (sic) only on 21.10.2016 on being advised, the Appellant is filing the present petition as he has a strong case on merits in his favour.”

Thus, on the one hand, it is averred that after the matter regarding the requirement of payment of Court fees was brought to the notice of the Petitioner, they deliberated on the issue and the entire process took almost a month consequent to which they approached the High Court on 22.10.2016. In Paragraph 5 to the contrary, it is said that the Petitioner came to learn of the anomalies only on 21.10.2016 and on being advised, filed the present Petition on 22.10.2016.

(15) Being germane to the issue at hand, we may refer to the decision of the Hon’ble Apex Court in **Esha Bhattacharjee** (*supra*), the appropriate paragraphs of which are extracted herein below:

“21.4. (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.
.....

21.9. (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.

21.10. (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.

21.11. (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.

21.12. (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.
.....



22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.4. (d) The increasing tendency to perceive delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(16) The principles applicable to an application for condonation of delay is, therefore, succinctly stated. The application as already observed has been drafted in a haphazard manner, scant regard being given to project the actual delay. That apart, the contradictions in the submissions as extracted *supra* also reveal a careless attitude despite the knowledge that it is to be considered by this Court. This Court is indeed conscious and aware that a pedantic approach has to be avoided while considering petitions for condonation of delay, for the ends of justice, but the Petition does not qualify as a petition for condonation of delay, the statutory provisions not having been being invoked. The Petitioner cannot take shelter under the P.P. Rules.

(17) In this context, it would also be apposite to refer to the decision of **Basawaraj** (*supra*), wherein it was observed as follows;

"12. It is settled legal proposition that laws of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."



(18) From the foregoing discussion, it is clear that the Petition reflects negligence, inaction, misrepresentation and a lack of *bona fides* and has failed to put forth substantial reasons for allowing the prayer, even if the instant Petition is to be considered as one for condonation of delay. In the said circumstances, the Petition being devoid of merits deserves to be and is accordingly dismissed as rejected.

(19) Consequently, the Appeal is also dismissed.

Sd/-

(Meenakshi Madan Rai)
Judge
19-04-2017

Approved for reporting :**Yes**
Internet :**Yes**