

Party Name : GOURI RANI ROY CHOUDHURY Vs MONOBIKASH DATTA BISWAS & ANR

THE HONBLE THE CHIEF JUSTICE T. VAIPHEI

28.04.2017.

Heard Mr. A. K. Bhowmik, the learned senior counsel assisted by Ms. A. Banik, the learned counsel for the petitioner. Also heard Mr. D. Bhattacharia, the learned counsel for the respondents.

This revision petition is directed against the order dated 01.12.2015 passed by the learned Additional District Judge, Court No.5, West Tripura, Agartala in Civil Misc. (Condonation) No.37 of 2014 dismissing the application for condonation of delay and for setting aside the abatement of Title Appeal No.9 of 2013 by substituting the legal heir of the deceased/plaintiff-petitioner.

The petitioner (Smt. Gouri Rani Roy Choudhury) and her mother, the deceased, had instituted Title Suit No.124/1995 before the learned Civil Judge, Sr. Division, Court No.2, Agartala. The suit was dismissed whereupon the Title Appeal No.9/2013 was filed by the deceased/plaintiff-appellant. (Smt. Manju Rani Roy Choudhury) It may be noted at this stage that the petitioner herein and her deceased mother had earlier executed a deed of general power of attorney on 14.01.2000 constituting Sri Hari Mohan Das as their attorney to represent them in connection with the said suit. While the appeal was pending, the mother of the petitioner i.e. one of the executants of the attorney power, expired on 09.05.2013. What happened thereafter is a subject matter of controversy in this case. There was admittedly a delay of 173 days in filing the appeal. Having not filed the appeal in time, the appeal also stood abated. This prompted the petitioner to file an application for condonation of delay before the appellate Court by giving explanation for the delay. The appellate Court by the impugned order dismissed the application on the ground that the petitioner by virtue of the said attorney power did not get the authority to authorize Hari Mohan Das to represent her. It was also held by the appellate Court that the explanation of delay given by the petitioner could not constitute sufficient cause for condoning the delay of 173 days. Aggrieved by this order, this revision has been filed.

Both Mr. A. K. Bhowmik, the learned Sr. counsel for the petitioner and Mr. D. Bhattachariya, the learned counsel for the respondents have been heard at some length. There is no dispute that apart the petitioner is the only daughter of deceased, who along with her, had executed the general power of attorney. As the sole legal heir of the deceased, the petitioner filed the revision petition for condoning the delay and for setting aside the abatement and to substitute her as the legal representative of her deceased mother. As there was delay, there was a prayer for condoning the concerned delay.

I have carefully gone through the deed of power of attorney executed by the deceased and the petitioner. At the outset, it must be noted that the deed was not for a *special* power of attorney but was for a *general* power of attorney. The appellate Court has overlooked the fact that there are many other clauses in the deed of power of attorney, such as Clause 9 and 10 thereof which authorized said Harimohan Das to prosecute and defends all actions, proceedings, suit etc. Here is a case where one of the executants died whereafter the other executant, who is no less a person than the sole legal representative of the deceased executant, seeks to be substituted as her only legal heir, for which the said application was filed along with a prayer for condoning the delay in filing the said application. It is as simple as that. In my opinion, the appellate Court has taken a hyper-technical view of the matter and has in the process arbitrarily non-suited the petitioner. This amounts to failure to exercise the jurisdiction vested in the appellate court by law. In so far as the second aspect of the matter is concerned, I have carefully examined the reasons assigned by the petitioner for the delay in filing the application for abatement. I am in agreement with the appellate Court in his finding that the petitioner has acted in a negligent and casual manner in prosecuting her case. However, on considering the matter from all angles, I am of the opinion that though the petitioner might not be as vigilant as she ought to have been, yet her conduct does not, on the whole, deserve to describe her as an irresponsible litigant. True, she should have been more vigilant, but her failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation. Therefore, the delay is condoned subject, however, to payment of ₹3,000/- (Rupees three thousand) only by the petitioner to the respondents within one month.

The impugned order is, therefore, set aside. The abatement is also set aside. The petitioner is allowed to be substituted as the legal heir of the deceased-appellant/plaintiff. The appeal shall stand restored to the file of the appellate Court for further proceedings in accordance with law.

The revision is allowed subject to the payment as aforesaid. Transmit the L.C records forthwith.