

# IN THE HIGH COURT OF MANIPUR

## AT IMPHAL

### CRP (Art. 227) No. 21 of 2023

Smt. Kangjam (N) Debala Devi, aged about 63 years, D/o (late) K. Babudhon Singh, resident of Uripok Sinam Leikai, P.O. & P.S. Imphal and District Imphal West, Manipur

*..... Petitioner/Plaintiff*

**- Versus -**

1. Shri Kabrambam Manaobi Singh, S/o (late Kabrambam Iboton Singh of Khurai Leikai, JNIMS Road, P.O. & P.S. Porompat, Imphal East District, Manipur.

*.....Principal Defendant/s*

2. Shri Kabrambam Kumar Singh, S/o (late) Kabrambam Iboton Singh of Khurai Leikai, JNIMS Road, P.O. & P.S. Porompat, Imphal East District, Manipur.
3. Smt. Kangjam (N) Sushila Devi, D/o (late) K. Babudhon Singh of Kwakeithel Mayai Koibi, P.O. Tulihal, P.S. Patsoi, Imphal West District, Manipur.

*.....Proforma Defendants.*

## B E F O R E

**HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Petitioner/Plaintiff	::	Ms. M. Swarnalata Devi, Adv.
For the Respondents/Defendants	::	Mr. Ch. Momon, Adv.
Date of Hearing	::	16.08.2023
Date of Order	::	27.12.2023

## ORDER (CAV)

[1] The petitioner/plaintiff filed the present petition under Article 227 of the Constitution of India against the impugned order dated 08.12.2022

passed by the Ld. Civil Judge, Senior Division, Imphal East in Judl. Misc. Case No. 55 of 2017 (Ref: Original Suit No. 42 of 2016).

**[2]** By the impugned order, the Trial Court condoned the delay of 267 days for defendant No. 1 and 166 days for proforma defendant No. 2 in filing written statement with cost of Rs. 2000/- (Rupees two thousand). The petitioner/plaintiff filed Original Suit No. 42 of 2016 against the respondents/defendants inter-alia praying for declaration that he is the owner and absolute physical possession of suit land A-2 & B and for declaring 2 (two) registered sale deeds and 2 (two) registered gift deeds as valid and binding all on the parties on the suit land, etc.

**[3]** The respondent No. 1 and respondent No. 2 herein (who are defendant No. 1 and Proforma defendant No. 2 in the suit) filed an application being Judl. Misc. Case No. 55 of 2017 under Order VIII Rule 3 of CPC read with Section 5 of Limitation Act, 1963 and for condoning delay of 276 days and 166 days for defendant Nos. 1 & 2 in filing written statement to the suit. It is stated that defendant No. 1 received summon on 29.03.2016 and defendant No. 2 received summon on 28.06.2016. Hence, delay of 276 days and 166 days occurred in filing the written statement. It is stated that respondents/defendant Nos. 1 & 2 are Electricians by profession working in Nagaland and they were out of station for 9 (nine) months. As such, they could not file the written statement in time. It is stated that the delay so caused is not intentional and due to the fact narrated above. The petitioner/plaintiff filed a written objection to the application for condoning

delay in filing the written statement. It is stated no reason is given for granting leave to file written statement after a long delay. It is stated that single application for 2 (two) prayers for 2 (two) different purpose has been filed. It is prayed that the application for leave of filing the accompanying written statement be rejected.

**[4]** After perusing the relevant provisions of CPC along with the relevant case law and the materials on record, by the impugned order dated 08.12.2022 in Judl. Misc. Case No. 55 of 2017 (Ref: O.S. No. 42 of 2015), Ld. Civil Judge, Senior Division, Imphal West held that delay was properly and sufficiently explained and in the interest of justice, the application for condonation of the delay of 276 days for the defendant No. 1 and 166 days for proforma defendant No. 2 in filing written statement was allowed with cost of Rs.2000/- and the written statement was taken on record.

**[5]** Heard Ms. W. Swarnalata, learned counsel for the petitioner/defendant and Mr. Ch. Momon, learned counsel for respondent Nos. 1 & 2/defendant Nos. 1 & 2.

**[6]** Ms. W. Swarnalata, learned counsel for the petitioner/defendant, submits that there is no proof of respondents/defendants staying in Kohima, Nagaland for 9 months and assuming if the same is true, the family members could have informed them over cell phone immediately. It is also stated that every day delay on expiry of the prescribed period of limitation has not been explained by the respondents/defendant Nos. 1 & 2.

[7] Ms. W. Swarnalata, learned counsel, refers to the leading case of **Kailash vs. Nahku** reported as **(2005) 4 SCC 480** which held that provisions of Order VIII Rule 1 CPC is mandatory and directory. However, the prayer seeking time beyond 90 days for filing written statement ought to be made in writing and the extension of time shall only by way of exception and for reasons to be recorded in writing. However, the same should not be on mere asking, but should be for reason to be recorded in writing. If there is gross negligence on the part of the defendant or his counsel, the Court may impose cost in appropriate case. It was also held that observance of time which are contemplated by Order VIII Rule 1 shall be ruled and departure thereof and exception for satisfactory reasons. Learned counsel for the petitioner/plaintiff has pointed out that in the present case there is no sufficient reasons have been explained by the respondent Nos. 1 & 2/defendant Nos. 1 & 2 for extension of time in filing the written statement. It is prayed that the impugned order may be set aside and the written statement filed by the defendants be rejected.

[8] On 08.08.2023, Mr. Ch. Momon, learned counsel for the respondents/defendants, submitted that the matter be head on the available record without filing of any reply. Learned counsel for the respondents/defendants has pointed out that in para 3 of the application i.e. Judl. Misc. Case No. 55 of 2017 (Ref: O.S. No. 42 of 2015), the respondents/defendant No. 1 & 2 stated that were in Nagaland working as electricians and due to same reason, they could not file the written statement as well as written objection in time. Learned counsel for the

respondents/defendants draws the attention of this Court to para 4 of the written objection filed by the petitioner/plaintiff to the application i.e. Judl. Misc. Case No. 55 of 2017 (Ref: O.S. No. 42 of 2015) that the petitioner/plaintiff did not deny the fact that respondents/defendant Nos. 1 & 2 were in Nagaland for 9 months. Learned counsel for the respondents/defendants further submits that the Ld. Civil Judge, Senior Division minutely examined the fact of the case and passed a reasoned statement. It is the primary function of the Court to adjudicate the dispute between the parties and to advance the substantial justice and rules of limitation are not meant to negate the right of the parties.

[9] Mr. Ch. Momon, learned counsel for the respondents/defendants, refers to the judgment of **Kusum vs. Kanchan Devi** reported as (2005) 6 SCC 705 to the point that the Court has discretion to allow extension of time as an exception to accept written statement under Order VIII Rule 1 CPC. Learned counsel for the respondents/defendants refers to the case of **Salem Advocate Bar Association, Tamil Nadu vs. Union of India** reported as (2005) 6 SCC 344 where it was held that provisions of Order VIII Rule 1 CPC provides for upper limit of 90 days to file written statement is directory. However, the order extending time to file written statement cannot be made in routine and has to be extended only on exceptional hard case and so not to nullify the period fixed by Order VIII Rule 1. It is stated that since the plaintiff/petitioner did not deny the long absence of the defendant/respondent Nos. 1 & 2 for 9 months, there is no infirmity in the impugned order and prays for rejecting the present application.

**[10]** In the present case, the reason given by the respondents/defendant Nos. 1 & 2 for not filing the written statement in time is that they were working as electricians and were staying in Nagaland for 9 months and due to this fact, the written statement could not be filed in time. This fact has not been denied by the petitioner/plaintiff in their written objection filed before the Ld. Civil Judge, Senior Division, Imphal East. The suit also involves execution of 2 (two) registered sale deeds and 2 (two) registered gift deeds and as such, this Court is of the considered view that on mere technicalities should not come in adjudication of the the dispute involved in the main suit.

**[11]** Since the petitioner has not denied the long absence of respondents/defendant Nos. 1 & 2 for 9 months from their residence being in Nagaland, this Court is of the view that the delay has properly been explained. Accordingly, there is no infirmity in the impugned order dated 08.12.2022 passed by the Ld. Civil Judge, Senior Division, Imphal East in Judl. Misc. Case No. 55 of 2017 (Ref: O.S. No. 42 of 2015).

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**[12]** The petition is dismissed. No cost.

**[13]** Send a copy of this order to the Ld. Civil Judge, Senior Division, Imphal West for information.

**JUDGE**

**FR/NFR**

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