

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP No.69 of 2024

CRP No.70 of 2024

Sri Ashwini Chandra Sarkar alias Ashwini Kumar Sarkar, son of late Purna Chandra Sarkar, resident of Lankamura, Ward No.1, P.S. West Tripura, District- West Tripura.

..... *Petitioner-Defendant No.3*

V E R S U S

1. Sri Krishna Kanta Debnath, son of late Sashi Mohan Debnath
2. Sri Hari Mohan Debnath, son of late Sashi Mohan Debnath
3. Sri Sunil Debnath, son of late Sashi Mohan Debnath
4. Sri Rahul Debnath, son of late Sashi Mohan Debnath
5. Smt. Ashu Bala Debnath, daughter of late Sashi Mohan Debnath
6. Smt. Usha Debnath, daughter of late Sashi Mohan Debnath
7. Smt. Archana Debnath, daughter of late Sashi Mohon Debnath
8. Smt. Gouri Debnath, wife of late Bipul Debnath
9. Miss Binita Debnath (10 years), daughter of late Bipul Debnath
10. Mstr. Birat Debnath (3 years), daughter of late Bipul Debnath
11. Mstr. Biprajit Debnath, son of late Bipul Debnath.

All residents of Lankamura, Ward No.1, P.O. Lankamura, P.S. West Tripura, District- West Tripura, Pin-799009.

Respondent Nos.9, 10 & 11 being minors are represented by their mother i.e. the respondent No.8, being their natural guardian.

..... *Respondent-petitioners*

12. Smt. Saraswati Sarkar, wife of late Akhil Chandra Sarkar
13. Sri Subhash Ch. Sarkar, son of late Akhil Chandra Sarkar

Both are residents of Lankamura, Ward No.1, P.S. West Agartala, District- West Tripura.

14. Smt. Milan Sarkar (Das), wife of late Anil Chandra Das, resident of Ananga Nagar, P.S. Airport, District- West Tripura.

..... *Pro-forma-respondents*

For Petitioner(s) : Mrs. S. Deb(Gupta), Advocate,
Ms. Rumpa Dey, Advocate.

For Respondent(s) : Mr. P. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of argument and delivery of Judgment & Order : 29th August, 2024

Whether fit for reporting : YES.

JUDGMENT & ORDER (ORAL)

Respondents have appeared on notice in both the civil revision petitions. Heard Mrs. S. Deb(Gupta), learned counsel for the petitioner and also heard Mr. P. Saha, learned counsel for the respondents. The same set of respondents are there in both the civil revision petitions who are represented by learned counsel Mr. P. Saha, in both the revision petitions.

[2] These petitions arise in common background. Since facts and issues are identical and parties are also the same in both the revision petitions, they have been heard together and are being disposed of by this common judgment.

[3] By the impugned order dated 21.06.2024 passed in Civil Misc.(Condonation) No.02 of 2022 arising out of T.S No.58 of 2015, the learned Court of Civil Judge (Junior Division), Court No.1, West Tripura, Agartala has condoned the delay of 2117 days in preferring the restoration petition bearing Civil Misc.(Restoration) No.02 of 2022 to revive the original Title Suit No.58 of 2015 which was dismissed for non-prosecution on 27.02.2016 under Order IX, Rule 8 of CPC. By the order of the same date, Civil Misc.(Restoration) No.02 of 2022 was allowed upon condonation of the delay of 2117 days and Title Suit No.58 of 2015 was restored to its original file under Order IX Rule 9 of CPC read with Section 151 of CPC. Being aggrieved by both the orders, the defendant No.3 has preferred the instant revision petitions.

[4] Mrs. S. Deb (Gupta), learned counsel for the petitioner-defendant No.3 submits that mere perusal of the condonation application in CRP No.70 of 2024 (Annexure-4) would reveal that there is no semblance of any explanation or sufficient cause shown by the plaintiffs for condonation of such a huge and inordinate delay of 2117 days in preferring the restoration petition. The learned trial Court has not applied its mind to the purported grounds taken in the delay condonation petition in a case where the delay was more than two thousand days. Delay has been condoned by the learned court being persuaded by the contention of the plaintiffs that the suit was dismissed on account of lapse of the petitioners' advocate and there was no *mala fide* on their part in approaching the Court after such a delay. It is submitted that learned trial court has allowed the delay condonation petition and consequent restoration of the title suit in teeth of the guiding principles laid down by the Apex Court in case of ***B. Madhuri Goud versus B. Damodar Reddy***, reported in (2012) 12 SCC 693. It is submitted that negligence of the plaintiffs is writ large not only from the quantum of delay but absence of any plausible explanation for its condonation in their application also. Therefore, the impugned order deserves to be set aside to prevent miscarriage of justice.

[5] Mr. P. Saha, learned counsel for the respondents has supported the impugned order. He relies upon the contents of the delay condonation petition. He submits that proceedings of the suit were going on smoothly from 16.07.2015 to 05.02.2016 on which dates several issues were framed and the next date was fixed on 20.02.2016 for examination-in-chief of the plaintiffs. However, it was posted on 27.02.2016 for their examination-in-

chief which the plaintiffs were completely unaware of. Resultantly, no steps were taken on behalf of the plaintiffs by the guardian of all the legal heirs who used to regularly visit the Court and meet his appointed lawyer with the hope and trust that they are properly represented. Despite asking the lawyers as to the status of the case, he was assured not to worry as the proceedings were going on smoothly. Between 08.07.2015 to 18.12.2021, the said guardian, Sri Krishna Kanta Debnath used to visit the lawyer's chamber in the Court and paid fees to his lawyers with the hope that they would win the case. Even during the pandemic, he used to visit the Court. He also requested his lawyer to return the case file to him so that he could appoint another lawyer but he was assured that they would win the case within a short period. Between 14.03.2019 to 15.07.2019, he could not meet his lawyer as his brother Bipul Debnath was murdered. On 15.12.2021, he again met the advocate and requested him to hand over the case file since 2015 till 2021 no fruitful result had come despite payment of the lawyer's fees. He was, however, threatened by the concerned lawyer and had to leave the chamber in a crying position. Ultimately, the file was handed over to him and he found that there was no written statement by defendant No.3 in the said file.

[6] He, thereafter, met his present lawyer on 17.12.2021. The learned lawyer found that the case had been disposed of for non-prosecution on 27.02.2016 itself as the plaintiffs were absent and no steps were being taken. He again visited the office of his previous counsel on 21.12.2021. He was aghast to know that his earlier two lawyers up-to November, 2021 despite taking their fees, had not taken any diligent steps. He advised his present lawyer also to take legal action against the earlier two lawyers but he

was told that no purpose would be served by proceeding against the lawyers. He was advised by the present lawyer to approach the Court for restoration of the case stating all real facts along with condonation petition. For the period 14.03.2020 till October, 2021 limitation would not be counted in terms of the order of the Apex Court due to Covid. The delay counted in the right manner would be from 27.03.2016 to 13.03.2020 which is 1553 days. With this explanation, plaintiffs filed the delay condonation petition on 24.01.2022. Thus, according to him, the delay is 5 years 9 months and 16 days only. The learned trial Court considered the explanation and found that plaintiffs were not at lapse but it was the fault of the advocate who was representing them which led to dismissal of the suit in default and also delay in seeking restoration. He submitted that plaintiffs are illiterate and ignorant persons and they could not understand the technicalities of the legal proceedings before a court of law. They would be highly prejudiced if the impugned order is interfered and the suit is not restored.

[7] I have considered the submissions of learned counsel for the parties and gone through the two impugned orders of the same date by which delay of approximately 2117 days (which is 1553 days as per the plaintiffs before Covid started) has been condoned and consequently the suit has been restored. I have also perused the relevant paragraphs of the delay condonation petition placed by learned counsel for both the parties. Needless to say, the delay is not only huge and inordinate but has not been explained. The learned trial Court while dealing with the application for condonation of delay has simply held that it was the lapse of the plaintiffs' advocate that he could not file the restoration petition in time. As it appears from the

statement of petitioners, examination-in-chief of the plaintiffs was scheduled on 20.02.2016 and plaintiffs were supposed to be present on that date. Even if it was adjourned for some reason to 27.02.2016, it is not acceptable that since 27.02.2016 plaintiffs would keep visiting the Court premises and the chamber of his lawyers without coming to know of the actual status of the case for more than 5 years till Covid intervened. The explanation furnished by the plaintiffs in so many paragraphs of the delay condonation petition fails to provide sufficient cause for such a huge delay even up-to 15.03.2020 when Covid intervened and limitations were not to be counted as per the order of the Supreme Court in *Suo moto Writ Petition (Civil) No.03 of 2020*. The learned Trial Court has misdirected itself by looking for absence of any deliberate act or *mala fides* on the part of the litigant in exercising its discretion under Section 5 of the Limitation Act when the plaintiffs were required to establish sufficient cause and offer proper explanation in failing to approach the Court for restoration of the Title Suit No.58 of 2015 for more than 5 years 9 months even excluding the Covid delay.

[8] The principles have been reiterated by the Apex Court in matters of condonation of delay in case of *Pathapati Subba Reddy (Died) by L.Rs. and Others versus Special Deputy Collector (LA)*. The opinion of the Apex Court in relevant paragraphs is quoted hereunder:

7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "*interest reipublicae ut sit finis litium*" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal *vis-a-vis* the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

10. Section 3(1) of the Limitation Act, for the sake of convenience, is reproduced hereinbelow:

“3. Bar of limitation.- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives ‘sufficient cause’ for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish ‘sufficient cause’ for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In *Bhag Mal alias Ram Bux v. Munshi (Dead) by LRs.1*, it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.

18. This Court as far back in 1962 in the case of *Ramlal, Motilal And Chhotelal v. Rewa Coalfields Ltd.*³ has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a ‘sufficient cause’ for various reasons, may refuse to condone the delay depending upon the bona fides of the party.

19. In *Maqbul Ahmad v. Onkar Pratap Narain Singh*⁴, it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.

21. In *Lanka Venkateswarlu v. State of Andhra Pradesh*⁶, where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as ‘liberal approach’, ‘justice-oriented approach’ and ‘substantial justice’ cannot be employed to jettison the substantial law of limitation.

22. It has also been settled vide *State of Jharkhand v. Ashok Kumar Chokhani*⁷, that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

27. It is in the light of the above legal position that now we have to test whether the inordinate delay in filing the proposed appeal ought to be condoned or not in this case.”

[9] In the present case, the condonation for the delay of more than 1500 days, even as per the petitioner, in such a perfunctory manner without any cogent explanation has not been exercised in a reasonable and objective manner by the learned trial Court. The learned Trial Court has, therefore, committed serious error in exercise of the jurisdiction vested in him under Section 5 of the Limitation Act, 1963.

[10] In view of the aforesaid facts and circumstances and for the above reasons, the impugned orders of condonation of delay and consequential restoration of the suit cannot be allowed to stand as it would lead to miscarriage of justice. Accordingly, the impugned orders dated 21.06.2024 passed by the learned Civil Judge (Junior Division), Court No.1, Agartala, West Tripura in Civil Misc.(Condonation) No.02 of 2022 and Civil

Misc.(Restoration) No.02 of 2022 both arising out of T.S. 58 of 2015 are set aside.

[11] Accordingly, both the civil revision petitions are allowed and disposed of.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ

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