

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH.

MC [RFA] 03 (AP)/ 2010 IN RFA 01 (AP) 2008

Smti. Ogan Perme,
W/o Lt. Opang Perme,
Berung Village,
PO & PS- Pasighat,
East Siang District.

.....*Appellant/petitioner*

By Advocates:

Mr. Tony Pertin

Mr. A. K. Singh

-Versus-

1. Shri Obang Dai,
S/o Lt. Tanari Dai,
Yapgo Village,
PO & PS- Pasighat,
East Siang District.

2. Smti. Momang Tamuk,
On behalf of Late Boduk Tamuk,
Boying Village, PO- Balek,
PS-Pasighat,
East Siang District.

..... *Respondents.*

By Advocates:

Mr. M. Pertin,

Mr. T. Leriak

**BEFORE
THE HON'BLE MR. JUSTICE P.K.MUSAHARY**

Date of hearing : 16th June, 2010

Date of Judgment & Order : 16th June, 2010

Pz

JUDGMENT & ORDER

(ORAL)

Heard Mr. Tony Pertin, learned counsel for the petitioner-appellant and also heard Mr. T. Leriak, learned counsel appearing for the respondents.

2. This application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 249 days in filing the application for restoration of FRA No.01 (AP) 2008, which was dismissed for default on 10-08-2009.

3. In explaining the delay, the petitioner-appellant has made the following averments in para 2 of the petition, which is quoted below:-

"2. That the RFA NO. 1 (AP)/2008 had come up before this Hon'ble Court on 10-08-2009 but unfortunately no counsel could represent the appellant/petitioner due to which the case was dismissed for default. The counsel of the petitioner Tony Pertin was present in the Court premises on 10-08-2009 but was outside the Court room and therefore at the relevant point of time when the case was called at the fag end of the day's proceeding, the petitioner could not be represented by any counsel of the case and was dismissed for default. Further, during that relevant period the conducting counsel Sri Tony Pertin was sick and was undergoing medical treatment and hence there was some derailment of process of supervision for which the counsel Sri Tony Pertin expresses his deep regret and apologises for the dereliction of duty."

4. Mr. Pertin, learned counsel for the petitioner-appellant submits that he came to know about the dismissal of the appeal in default only in the third week of April, 2010 and he immediately applied for a certified copy of the said order, which he obtained on the same day and thereafter filed the restoration petition on 22-04-2010 along with the present condonation application.

12

5. Admitting the fault and lapse on his part, Mr. Pertin submits that the party should not be made to suffer for his default and in the interest of justice, the delay in question may be condoned. In this regard, he relies on **Union of India and ors. Vs. T.L. Angami and Ors.**, reported in **2004 (Suppl) GLT 640**, in which after referring to several decisions including the ones rendered by the Supreme Court it is held inter alia that the litigants should not suffer for negligence/mistake of counsel.

6. Mr. T. Leriak, learned counsel appearing for the respondents submits that the explanations given by the petitioner are not satisfactory and convincing inasmuch as each day delay has not been explained as required under the provisions of the Limitation Act. The negligence/lapse on the part of the petitioner as well as the counsel concerned is apparent and the same has been admitted by them and under such circumstances, the delay in question, cannot be condoned on sympathetic consideration due to illness or treatment of the counsel concerned. The petitioner-appellant engaged as many as 5(five) counsel including the main counsel Mr. Tony Pertin. The other 4(four) counsel could have enquired the matter before the expiry of limitation period and filed the application for restoring the appeal and the same having not been done, the explanations given by the petitioner/appellant in this application is liable to be rejected inasmuch as the law of limitation has to be applied with all its rigors prescribed by the Statute. He would, in this regard, rely on **Union of India and others Vs. Wood Crafts Product Ltd. and Another**, reported in **2001 (1) GLT 34** and the **State of Tripura and Ors. Vs. Naresh Ch. Paul**, reported in **1997 (III) GLT 575**.

7. In the aforesaid two cases referred to by Mr. Leriak, the lapse or negligence of the engaged counsel are not involved; rather the negligence/lapse on the part of the litigants were found for which the Court was in favour of strict appliance of the limitation law and the prayer for condonation of delay was rejected. In the case cited by the petitioner-appellant **T. L. Angami** (supra), the delay was occasioned due to inaction of senior Central Govt. Standing Counsel.



8. In the present case, the learned counsel has fairly admitted his negligence/mistake. The party (appellant) was not intimated about the dismissal of the case and as such, he was not aware about the same. It may be noted that M. C [RFA] 04 (AP)/2010 for recalling the order of dismissal dated 10-08-2009 and restoration of RFA No.01 (AP) 2008 is filed by the counsel Mr. Tony Pertin himself and the affidavit accompanying the said application is sworn by him. Similarly, the present application for condonation of delay has also been filed by the counsel Mr. Tony Pertin himself and the accompanying affidavit is sworn by him. The manner in which the misc. applications for restoration as well as the condonation of delay have been filed clearly indicates that the learned counsel has fully undertaken the responsibility for the mistake/lapse committed by him without shifting the responsibility to the appellant and the other engaged counsel.

9. In my considered view, it would run counter to the ends of justice if the admitted lapse/mistake committed by the counsel in taking the appropriate steps within the prescribed period is not excused so that the petitioner-appellant is not made to suffer injustice. The court may give liberal construction for securing substantial justice and the condonation of delay may be ordered if it is found that there is no deliberate or gross inaction or lack of bonafides on the part of the party or its counsel. The principles of law for condonation of delay have been laid down by the Supreme Court in many cases. In my considered view, it would be appropriate to extract the relevant portion from **G. Ramegowda Vs. Special Land Acquisition Officer, Bangalore**, reported in **AIR 1988 SC 897**.

"7. There is

 , it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence deliberate or gross inaction or lack of bonafides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts.

ju

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 delay. ...

... ..
... .."

10. I have considered this case in the light of the aforesaid decision and come to a conclusion that the petitioner-appellant has been able to explain the delay satisfactorily as mandated by statute and I am inclined to condone the delay in question. Accordingly, the delay in question stands condoned.

11. The misc. case stands allowed.


JUDGE

sd