

THE STATE OF MANIPUR & ORS.

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v.

KOTING LAMKANG

(Civil Appeal No. 8298 of 2019)

OCTOBER 22, 2019

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[R. BANUMATHI, A. S. BOPANNA AND

HRISHIKESH ROY, JJ.]

Delay/Laches: Appeal by State – Delay of 312 days in preferring the Regular First Appeal (RFA) – Condonation of – Dismissal of application for condonation of delay – Condonation was sought by the appellant on the ground that they made a bonafide mistake in preferring the appeal against an order before the wrong forum i.e. District Judge – The District Judge held that it had no pecuniary jurisdiction to entertain the appeal and disposed of appeal permitting the appellant to appeal before High Court – Appeal to High Court – Time spent by appellant in wrong forum was 44 days – High Court rejected the condonation application observing that there was no explanation for time taken by appellant for the remaining period – On that basis, RFA was not entertained on merits – Appeal before Supreme Court – Plea of respondent was that after decree dated 18.7.2016, the execution proceedings commenced and finally concluded on 11.7.2018 and therefore, nothing survived in RFA to be considered on merits inasmuch as, possession of the concerned land was handed over to the respondent – Held: Appellants preferred the appeal at first instance on 15.6.2017 before the District Judge – But since this was before the wrong forum and it was filed after a delay of about eleven months and there was no explanation for the time taken by the State between 18.7.2016 and 15.6.2017, the delay in the RFA before the High Court was not condoned – In fact, the Court found that the State did not show as to what prevented them from preferring the appeal before the District Judge (wrong forum), until 15.6.2017 and that the latitude in applying the standards of “sufficient cause” test was not attracted – But while concluding so, it was necessary for the court to also be conscious of the bureaucratic delay and the slow pace in reaching a Government decision and the routine way of

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- A *deciding whether the State should prefer an appeal against a judgment adverse to it – Regard should be had to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly – This in turn, would result in injustice to the institutional interest of the State – In the instant case, under the decree passed against the appellants-State and authorities, they were directed to vacate and handover land, projected to be an area of strategic importance by the appellants – Therefore, it was necessary for making available to the appellants a legal forum, which could consider their challenge to the decree – If consideration of the RFA is not permitted on strategically sensitive case involving security, in*
- B *the ultimate analysis, the public interest is likely to suffer – Therefore, to avoid injustice to the State's interest and considering the special circumstances in the matter at issue, in exercise of jurisdiction under Art.136 of the Constitution, the delay in filing the first appeal is condoned subject to cost of Rs.50,000/- payable by the appellants in the High Court – RFA preferred by the appellants is restored for consideration on its own merits – Issue of possession and finalisation of the execution is made subject to the final decision of the High Court in the RFA – Executing Court directed to refund Rs. 15 lakhs to the appellant-State deposited in the Executing Court.*
- C *the ultimate analysis, the public interest is likely to suffer – Therefore, to avoid injustice to the State's interest and considering the special circumstances in the matter at issue, in exercise of jurisdiction under Art.136 of the Constitution, the delay in filing the first appeal is condoned subject to cost of Rs.50,000/- payable by the appellants in the High Court – RFA preferred by the appellants is restored for consideration on its own merits – Issue of possession and finalisation of the execution is made subject to the final decision of the High Court in the RFA – Executing Court directed to refund Rs. 15 lakhs to the appellant-State deposited in the Executing Court.*
- D *the ultimate analysis, the public interest is likely to suffer – Therefore, to avoid injustice to the State's interest and considering the special circumstances in the matter at issue, in exercise of jurisdiction under Art.136 of the Constitution, the delay in filing the first appeal is condoned subject to cost of Rs.50,000/- payable by the appellants in the High Court – RFA preferred by the appellants is restored for consideration on its own merits – Issue of possession and finalisation of the execution is made subject to the final decision of the High Court in the RFA – Executing Court directed to refund Rs. 15 lakhs to the appellant-State deposited in the Executing Court.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8298

E of 2019.

From the Judgment and Order dated 27.11.2017 of the High Court of Manipur at Imphal in M.C. (RFA) No. 19 of 2017.

Leishangthem Roshmani Kh and Ms. Anupama Ngangom, Advs. for the Appellants.

F Sridhar Potaraju, Shri Gaichangpou Gangmei, Ms. Shweta Parihar, Ms. Shiwani Parihar, Ms. G. Usharsi and Vishnu Thulasi Menor, Advs. for the Respondent.

The following Order of the Court was passed

O R D E R

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HRISHIKESH ROY, J.

- 1. Leave granted.
- 2. This appeal is preferred against the Judgment and order dated 27.11.2017 passed by the High Court of Manipur at Imphal in M.C.(RFA)No. 19 of 2017 in reference to RFA No. 5/2017 whereby

and where under, the learned Judge after considering the application filed by the appellants for condonation of delay of 312 days in preferring the Regular First Appeal, has declined to condone the delay and the application was consequently dismissed. The condonation was sought by the appellants with the projection that they made a bonafide mistake in preferring the appeal against the impugned order and decree dated 18.07.2016 before the wrong forum i.e. learned District Judge, Imphal West. The Court however did not entertain the appeal on the ground that the Court has no pecuniary jurisdiction to entertain the appeal. Accordingly, Judl.Misc. Case No. 32 of 2017 was disposed of by the learned District Judge on 28.07.2017 permitting the appellant to file appeal before the High Court of Manipur.

3. From the application for condonation of delay in RFA No. 19/2017, it can be seen that the time spent by the appellant in the wrong forum was 44 days (15.06.2017 to 28.07.2017). The learned Judge of the High Court found that the delay was not explained for the other days. The condonation application was accordingly rejected with the observation that there is no explanation for the time taken by the appellants between 18.07.2016 and 15.06.2017. On that basis, the Regular First Appeal was not entertained on merits.

4. We have heard learned counsel appearing on behalf of the appellant-State of Manipur as well as the learned counsel appearing on behalf of the respondent.

5. The Learned counsel appearing on behalf of the respondent would point out that after the decree, the execution proceedings commenced and was finally concluded on 11.07.2018 and, therefore, nothing survives in the RFA to be considered on merits inasmuch as, possession of the concerned land was handed over to the respondent-plaintiff.

6. The above contention of the respondent is strongly refuted by the learned counsel appearing on behalf of the appellants. He submits that the State of Manipur and other defendants continue to be in possession of the disputed land, notwithstanding the decree and the execution proceedings.

7. In so far as the refusal by the High Court to condone the delay of 312 days in the RFA preferred by the State of Manipur and others, it is apparent that the appellants did prefer the appeal at first instance on

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- A 15.06.2017 before the District Judge. But since this was before the wrong forum and it was filed after a delay of about eleven months and there is no explanation for the time taken by the State between 18.07.2016 and 15.06.2017, the delay in the RFA before the High Court was not condoned. In fact the Court found that the State has not shown as to what prevented them from preferring the appeal before the District Judge (wrong forum), until 15.06.2017. The Court also said that the latitude in applying the standards of “sufficient cause” test is not attracted, in the instant case.
- B 8. But while concluding as above, it was necessary for the court to also be conscious of the bureaucratic delay and the slow pace in reaching a Government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the court felt that the delay in the appeal filed by the State, should not be condoned.
- C 9. Regard should be had in similar such circumstances to the impersonal nature of the Government’s functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by State are lost for individual default, those who are at fault, will not usually be individually affected.
- D 10. In the instant case under the decree passed against the defendants i.e. the State of Manipur, the Director General of Police and the Commandant of 8th battalion of the Manipur rifles, the appellants are to vacate and handover the Schedule “C” and “D” land, which is projected to be an area of strategic importance by the appellants. Therefore we feel that it is necessary for making available to the appellants a legal forum, which could consider their challenge to the decree obtained by the plaintiff from the Civil Judge (senior division) Chandel, in the O.S. no. 4 of 2015.
- E 11. In the present matter, the delay to the extent of 44 days, in moving before the wrong court was found to be satisfactorily explained in the impugned judgment. As regards the failure of the State to adequately explain the remaining period of delay, our opinion is that the interest of justice would be better served, if the appellants’ challenge to the decree of the Trial Court is allowed to be examined on merit, by the first Appellate Court. If the merit of the Defendant’s RFA is not permitted to be examined by the Appellate Court, the State will have no opportunity

to address their grievances before a higher Court. We may also observe that if consideration of the RFA is not permitted on strategically sensitive case involving security, in the ultimate analysis, the public interest is likely to suffer. The First Appeal should therefore be considered on merit instead of the State being non-suited, on the ground of delay.

12. Therefore to avoid injustice to the State's interest and considering the special circumstances in the matter at issue, we deem it appropriate to exercise our jurisdiction under Article 136 of the Constitution of India and interfere with the impugned order of the High Court of Manipur. The delay in filing the first appeal is condoned. This shall however be subject to payment of costs of Rs. 50,000/- (Rupees fifty thousand) by the appellants in the High Court. In the result, the Regular First Appeal preferred by the appellants is directed to be restored and considered on its own merits. Considering the rival contentions on possession being taken over/not taken over and the execution proceedings stated to have concluded on 11.07.2018, the issue of possession and finalisation of the execution is made subject to the final decision of the High Court, in the RFA No. 5 of 2017.

13. In view of the above decision, the Executing Court is directed to refund the sum of Rs. 15,00,000/- (Rupees fifteen lakhs) to the appellant-State of Manipur along with accrued interest deposited in the Executing Court, in pursuant to the order dated 29.01.2018 passed by this Court.

14. With the above order, the appeal is allowed.

Devika Gujral

Appeal allowed.