

GAHC010016992024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/367/2024

MD. KHALIL ALI AND 3 ORS
S/O- LT. DHANSA ALI, R/O- KHARGHULI, (BONDA), GHY-26, KAMRUP (M),
ASSAM

2: MD. MOINUL ALI
S/O- KHALIL ALI
R/O- KHARGHULI
(BONDA)
GHY-26
KAMRUP (M)
ASSAM

3: MD. RAFIK ALI
S/O- KHALIL ALI
R/O- KHARGHULI
(BONDA)
GHY-26
KAMRUP (M)
ASSAM

4: NURMOHAMMAD ALI
S/O- KHALIL ALI
R/O- KHARGHULI
(BONDA)
GHY-26
KAMRUP (M)
ASSA

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY MINISTRY OF PETROLEUM AND NATURAL GAS, NEW DELHI

2:COURT OF COMPETENT AUTHORITY GAIL INDIA LTD.

(GOVT. OF INDIA)
MAHARATNA COMPANY
BARUANI- GUWAHATI GAS PIPE LINE (BGPL) PROJECT CONSTRUCTION
OFFICE
HOTEL ROYAL DE CASA
BELTOLA- BASISTA ROAD
WIRELESS
BELTOLA
GHY
ASSAM
PIN- 781028

3:DY. COMMISSIONER
KAMRUP (M) AT GUWAHATI

4:GAIL (INDIA) LIMITED
GAIL BHAWAN
16 BHIKAJI CAMA PLACE
R.K. PURAM
NEW DELHI- 110066.

5:THE GENERAL MANAGER (CONSTRUCTION) PIPELINE (BGPL) PROJECT
5TH FLOOR
MEGHA PLAZA
BASISTHA CHARIALI
GUWAHATI
ASSAM
PIN- 781029

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

27.06.2024

Heard Mr. G Uddin, learned counsel for the applicant. Also heard Mr. S. Mitra, learned standing counsel GAIL appearing for respondent Nos. 4 and 5, Ms. S. Baruah, learned government Advocate appearing for the state

respondent.

This interlocutory application has been filed by the applicant for condoning the delay of 357 days in filing of the restoration petition for restoration of WP(C) No. 1138/2021, which was dismissed for non prosecution on 03.01.2023.

Heard the learned counsel for the parties and perused the averments made in support of the condonation application.

The grounds of delay are specifically averred in paragraph Nos. 6, 7, 8, 9 and 10 of the I.A. The said paragraphs are reproduced hereunder for ready reference:

“6. That, the present counsels able to filed an application under Order 9 Rule 4, read with Section 151 of C.P.C. for restoration of W.P. (C) No. 1138/2021 by setting aside the order dated 03.01.2023 along with this application vide I.A (Civil) /2024 under section 5 of the Limitation Act 1963, for condoning delay. The Writ petition was dismissed for default on 03-01-2023 and limitation of 30 days expired on 01-02-2023. Hence after 01-02-2023 till 23-01-2024, delay of 357 days occurred to file instant petition.

7. That the reasons for delay is that the applicants/writ TAR petitioners are belonging to same family and applicant/writ petitioner No.1, being father of the other applicants were leading the case. At the time of filing of the Writ petition, he came and contact with their earlier learned counsel through one middle man namely Gauri Medhi, who was an Advocate's Clerk Chief Judicial Magistrate Court. However, unfortunately said Advocate Clerk died on 07-08-2022. In this situation some communications gap arose between the applicants/writ petitioners with their earlier engaged counsel and could not able to keep track with subsequent development of the pending Writ. Petition.

8. That, thereafter the applicants/writ petitioners approached to their earlier engaged counsel but he did not give any satisfactory solution for restoration of the Writ Petition. The applicant/writ petitioners also lost their confidence upon their earlier engaged counsel and finding no other alternative, the applicants/writ petitioners approached to present sets of counsel and requested for taking necessary steps in respect of their case.

9. That the applicants/writ petitioners were unaware about the dismissal of their case till December 2022. After knowing about the dismissal of the case, the applicant took some time to manage the legal expenses and thereafter came to chamber of present counsel in 1 week of January 2024 after arranging legal fees, and handed over the brief of the case to their newly engaged counsels, who took some days time in preparing the restoration petition along with application for condoning delay.

10. That, from the record of the case, it reveals that their earlier counsel diligently conducted the case till the order of vacating interim order but thereafter, continuously defaulted in leading the main Writ Petition. The present counsels after going through the writ petition found some merit of the case and also found that due to dismissal of the Writ Petition, they may be prejudiced in respect of their legal rights to claim of compensation in respect of their land which is going to be acquired by respondents.”

Further, the respondents have also filed an objection praying that the delay ought not to be condoned and the writ petition ought not to be restored. Paragraph 6 of the said objection filed on 24.05.2024 is also reproduced hereunder for ready reference.

“6. That the Respondents beg to submit that a plain reading of the averments made in the Interlocutory Application as reproduced herein above, it becomes apparent that in the entire Interlocutory Application there is no averment to the effect that the previous counsel of the Applicants did not inform the Applicants about the dismissal of the Writ Petition so sought to be restored. The Respondents further beg to submit that further from the plain reading of the averments it also becomes apparent that the Applicants lack bonafide in as much as on hand there is an averment made in Paragraph No. 11 of the Interlocutory Application that their previously engaged counsel did not inform them about his non-

appearance before this Hon'ble High Court while on the other hand in Paragraph No. 8 of the said interlocutory Application it is averred that the previous set of counsels failed to give any satisfactory solution for restoration of the Writ Petition which interestingly again is contradictory to the averments made in Paragraph No. 7, which states that owing to some communication gap with their previously engaged counsels, the Applicants could not keep track of the developments of the writ petition. In view of the multiple and different stands being taken by the Applicants in the present Interlocutory Application, which are all contradictory to each other the Respondents most humbly beg to submit that the present application so filed by the Applicants lack bonafide and is accordingly liable to be dismissed forthwith."

Perusal of the aforesaid averment made in the I.A. for condonation appears that the petitioner was unaware about the dismissal till December, 2022 and that the advocate's clerk with whom the petitioner was in contact died on 07.08.2022 and that thereafter arranging the legal expanses engaged a new counsel who after taking some days filed the connected restoration petition in which the delay has occurred.

On the other hand, it appears that the primary objection of the respondents is that there is contradictory in the version of the applicant as regards the averments made in support for the grounds of condonation. Reading of the grounds of condonation averred in the application, there appears to be no any contradiction in the averments made therein.

It is a well settled law that condonation is a matter of discretion of the Court and unless and until the grounds averred are not sufficient or not bonafide, this Court shall not ordinarily foreclose the suit. Paragraph Nos. 8, 9, 10, 11, 12 and 13 of the decision of the apex court in the case of *N. Balakrishnan vs M. Krishnamurti reported in (1998) 7 SCC 123* are reproduced hereunder for ready reference.

“7. Learned Single Judge then observed that when the party is utterly negligent, he cannot be permitted to blame the counsel. Learned Single Judge has further remarked that : "A perusal of the affidavit does not reveal any diligence on the part of the respondent in the conduct of the proceedings. When already the suit has been decreed ex parte, the respondent ought to have been more careful and diligent in prosecuting the matter further. The conduct of the respondent clearly reveals that at any point of time, he has not realised his responsibility as a litigant."

8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation, But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to

consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

In this case the explanation for the delay set up by the applicant is found to be satisfactory, sufficient and bonafide. Accordingly, in the interest of justice, the delay of 357 days is condoned.

As such, this Interlocutory Application stands disposed of.

Let the connected I.A. for restoration be registered.

JUDGE

Comparing Assistant