



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

CRP No. 18 of 2024

1. Debananda Patgiri,
S/O- Late Madan Patgiri,
R/O- Vill.- Bamakhata,
P.S. Patacharkuchi,
Dist. Barpeta, Assam
2. Sukumar Choudhury,
S/O- Late Rajani Choudhury
R/O- Vill.- Bamakhata
P.S. Patacharkuchi
Dist. Barpeta Assam
3. Dilip Choudhury
S/O- Late Rajani Choudhury
R/O- Vill.- Bamakhata
P.S. Patacharkuchi
Dist. Barpeta Assam

.....Petitioners

-Versus-

1. Chakrapani Patgiri
S/O- Late Nareswar Patgiri,
R/O- Vill.- Bar- Bamakhata,
P.S. Patacharkuchi,
Dist. Barpeta, Assam

.....Respondent

For Petitioner(s) : Mr. K. D. Chetri, Advocate
For Respondent : Mr. H. Das, Advocate
Date of Judgment : 04.11.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

- 1)** Heard Mr. K. D. Chetri, learned counsel for the petitioners and Mr. H. Das, learned counsel for the respondents.
- 2)** This application under Article 227 of the Constitution of India has been filed by the petitioners impugning the order dated 04.08.2023, passed by the learned Civil Judge, Bajali, in Misc. (J) Case No. 06/2023, in connection with of Misc. Appeal No. 02/2023, whereby the delay of 99 days in preferring the Misc. Appeal No. 02/2023 was condoned by the said Court.
- 3)** The facts relevant for consideration of the instant Revision Petition, in brief, are that the respondents, as plaintiff, has filed a Title Suit No. 17/2018 against the present petitioners in the Court of learned Munsiff, Bajali Pathsala for declaration of right, title and interest over the suit land as well as for recovery of Khas possession by evicting the present petitioners from the suit land and for mandatory injunction.
- 4)** The petitioners/defendants had filed an application (Petition No. 43 dated 04.02.2020) under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, in the said suit, seeking temporary injunction in respect of the suit land.
- 5)** In connection with the aforesaid petition, the learned Munsiff, Bajali Pathsala, after hearing both the parties passed the order dated

19.03.2020 directing to maintain *status-quo* till the disposal of Petition No. 43.

- 6)** On 20.03.2020, the respondent appeared before the Munsiff, Bajali and filed an application for vacating the order dated 19.03.2020. However, by order dated 01.07.2020 directed both the parties to maintain status quo till the disposal of the Petition No. 43/2020.
- 7)** Being aggrieved and dissatisfied by the said order of the *status quo*, the respondent preferred an appeal before the Court of learned Civil Judge, Barpeta under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908. The said case was registered as Misc Appeal No. 02/2021. However, by order dated 30.06.2022 the said appeal was dismissed as during the pendency of the said appeal the injunction petition No. 43/2020 filed by the petitioner was disposed of on 13.08.2020.
- 8)** Being aggrieved and dissatisfied with the order dated 30.06.2022 passed in Misc Appeal No. 02/2021, the respondent had filed a Revision Petition before this Court under Article 227 of the Constitution of India. The said Revision Petition was registered as CRP (I/O) 256/2022.
- 9)** By order dated 24.03.2023, this Court dismissed the said Revision Petition as not being maintainable. However, this Court granted liberty to the respondent to approach the appropriate appellate court under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 assailing the Order dated 13.08.2020 by which the petition No. 43/2020 dated 4.02.2020 was allowed subject to prescribed period of limitation.

- 10)** Accordingly, the respondent preferred an appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 assailing the order dated 13.08.2020, whereby the temporary injunction was granted in favour of the present petitioners in respect of the suit land.
- 11)** As there was a delay in filing the said appeal, it was accompanied by an application for condonation of delay under Section 5 of the Limitation Act 1963. The said application was registered as Misc Case (J) No. 06/2023.
- 12)** After hearing both the parties, the Court of learned Civil Judge, Bajali, Pathsala by order dated 04.08.2023 passed in Misc Case (J) No. 06/2023 had condoned the delay subject to payment of the cost of Rs. 2,000/- by the present respondent. This order has been impugned in the instant revision petition.
- 13)** The learned counsel for the revisionist has assailed the impugned order mainly on the ground that in the application for condonation of delay the present respondent did not reveal the actual number of days of delay in preferring the Misc Appeal No. 02/2023. It is also submitted by the learned counsel for the revisionist that the First Appellate Court has mechanically condoned the delay of 99 days, in as much as the actual delay involved is of 1058 days.
- 14)** Learned counsel for the petitioner has also submitted that the Court of learned Civil Judge Bajali, Pathsala, while passing the impugned order, had failed to apply its mind judiciously to the facts of the case as the present respondents has himself admitted that he had applied for certified copy of the order dated 13.08.2020 in the year 2023 and

no reasonable explanation was given for such a delay in applying for the certified copies.

- 15)** Learned counsel for the petitioners has also submitted that the respondent was at fault in preferring the CRP (I/O) 256 of 2022 and he cannot take advantage of his own fault and seek condonation of delay in preferring an appeal against order dated 13.08.2020 beyond the period of limitation. He has also submitted that an application for condonation of delay may not be allowed in a casual manner as a right has been accrued in favour of the petitioners due to lapse of time.
- 16)** Learned counsel has also submitted that apart from the vague plea of prevailing of COVID-19 no other justifiable reason could be shown by the respondent in not preferring the appeal against order dated 13.08.2020 within a period of limitation.
- 17)** In support of his submission, the learned counsel for the petitioners has cited the rulings of the Apex Court in case of "***Union of India and Others Vs. Nipen Sharma***" (Civil Appeal No. 1992/2011) order dated 17.02.2011. The learned counsel has also cited another ruling of the Apex Court in the case of "***Balvant Singh (dead) Vs. Jagdish Singh and Others***" reported in ***AIR 2010 SC 3043***.
- 18)** On the other hand, learned counsel for the respondent has submitted that the Court of learned Civil Judge, Bajali has rightly condoned the delay in preferring the connected Misc Appeal impugning the order dated 13.08.2020 as the delay has been sufficiently explained by the respondents.

- 19)** Learned counsel for the respondent has submitted that the impugned order was passed when COVID-19 was prevalent and as the respondent had approached this Court by filing CRP (I/O) 256/2022, there was delay in obtaining the certified copy of order dated 13.08.2020.
- 20)** The learned counsel for the respondent has submitted that the liberty to file an appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 was granted to the respondent by order dated 24.03.2023 under CRP (I/O) 256/2022 and as such, the Civil Judge, Bajali after judicious exercise of discretion had condoned the delay in preferring the Misc Appeal No. 02/2023 by the present respondent.
- 21)** Learned counsel for the respondent has submitted that the period between 15.03.2020 to 28.03.2022 has been condoned in view of the direction of the Apex Court in "***Re-cognizance for Extension of Limitation***" reported in (2022) 3 SCC 117 and the period, during which the CRP(I/O) No. 256/2022 was pending before this Court i.e., from the date of filing of the said CRP till 24.03.2023, has also been rightly condoned by the learned Civil Judge, Bajali considering the facts and circumstances of the case.
- 22)** It is also submitted by the learned counsel for the respondent that as the respondent was not at fault in pursuing the remedy diligently, however, mistakenly he did so before the wrong Court and as this Court had granted liberty to approach the appropriate forum subject to question of limitation, which the respondent had done. Hence, it is submitted by the learned counsel for the respondent that there was no inaction, lack of bona fide, or any negligence on the part of the

petitioner and therefore, the Court of learned Civil Judge, Barpeta was right in condoning the delay.

- 23)** I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record including the records of Misc Case (J) No. 06/2023 in connection with Misc. Appeal No. 02/2023 which were requisitioned from the Court of learned Civil Judge (Sr. Division) Bajali at Pathsala.
- 24)** On perusal of the materials available on record, it is observed that no separate Misc Case was registered on Petition No. 43 which was filed, under Order 39 Rule 2 of the Code of Civil Procedure, 1908, by the present petitioners in the Title Suit. Same ought to have been done as per the provisions of Gauhati High Court Civil Rules and Orders, which appears to be a lapse on the part of the Office of the Munsiff, Bajali.
- 25)** It also so appears that being aggrieved due to the status quo order passed on the said petition, the respondent had agitated the same before the Trial Court, the First Appellate Court i.e., the Court of learned Civil Judge, Barpta as well as he also approached this Court by preferring the CRP(I/O)256/2022. Though, it was held that the CRP (I/O) 256 of 2022 filed by the respondent was not maintainable, however, the fact remains that the said CRP (I/O) was disposed of only on 24.03.2023 and during pendency of the said CRP (I/O)256/2023, it was not wrong on the part of the respondent to expect a favorable order in the said case. Though, the same did not happen and as a result there was a lapse in obtaining the certified copy of order dated 13.08.2020. These circumstances appear to have

been taken into consideration by the learned Civil Judge, Bajali while condoning the delay by the impugned order.

- 26)** The learned Civil Judge, Bajali also took into consideration the period condoned by the Apex Court. It is pertinent to note herein that in the case of “**in re-Cognizance for Extension of Limitation**” (Supra), the Supreme Court of India had, where limitation would have expired during the period between 15.03.2020 till 28.02.2022, extended the period of limitation till 90 days from 01.03.2022 and in the event actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, the longer period shall apply.
- 27)** The said period is automatically condoned by virtue of the judgment of the Apex Court in the aforesaid case. As regards the remaining period, the learned Civil Judge had regarded the grounds shown by the respondent to be sufficient cause within the meaning of Section 5 of the Limitation Act, 1963 for condoning the delay in preferring the Misc Appeal 2 of 2023.
- 28)** In exercise of powers under article 227 of the Constitution of India, this court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of their respective jurisdiction by the subordinate courts or tribunals. The exercise of this power and interfering with the orders of the courts has to be restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice and in such cases if the High Court does not interfere, grave injustice would occur.

- 29)** In the instant case, the facts shows that the respondent pursued remedy before wrong forum against *ad interim* orders, whereas in the process he failed to agitate against the order of injunction against him, which was passed on 13.08.2020 in injunction petition No. 43/2020, there appears to be no inaction or lack of bonafide on his part though he was wrong in approaching the wrong forum and in the process sitting over the order dated 13.08.2020.
- 30)** Moreover, in view of the liberty granted by this Court in CRP (I/O)256/2022 to the present petitioner in approaching the appropriate forum under Order 43 Rule 1 (r) of the CPC 1908, this Court is of considered opinion that the impugned order passed by the learned Civil Judge (Sr. Division) condoning the delay in preferring the Misc appeal No. 02/2023 has not caused grave injustice justifying an interference by this Court in exercise of its supervisory justification under Article 227 of the Constitution of India. More so, the fact that while allowing the condonation of delay application, the learned Civil Judge, Bajali has also imposed a cost of Rs. 2,000/- on the respondent.
- 31)** The liberal approach adopted by the learned Civil Judge Bajali in condoning the delay in preferring the Misc Appeal No. 02/2023 does not appear to be against well settled principles of law and justice in relation to condoning the delay under such circumstances.
- 32)** This Court, therefore, does not find this case to an appropriate case for interfering with the impugned order by exercising its supervisory jurisdiction.
- 33)** For the above reasons, the Civil Revision Petition is dismissed.

- 34)** Send back the records of Misc (J) Case No. 6/2023 in connection with Misc Appeal No. 02/2023 which was requisitioned in connection with this Civil Revision Application.
- 35)** The interim stay on further proceedings of Misc Appeal No. 02/2023 pending before the learned Civil Judge, Bajali, which was granted by order dated 19.02.2024, is hereby vacated.

JUDGE

Comparing Assistant