

GAHC010054322017



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

Case No. : I.A.(Civil)/4001/2017

MUKUT ROY and ANR

2: MANIK ROY
BOTH ARE SON OF SRI GAJENDRA NATH ROY
R/O VILL. DEBATTAR HASDAHA
P.O. GOLAKGANJ
DIST. DHUBRI
ASSAM

VERSUS

SRI NAGENDRA ROY
S/O LATE BISHAM CH. ROY, VILL. DEBATTAR HASDAHA, P.S.
GOLAKGANJ, DIST. DHUBRI, ASSAM.

Advocate for the Petitioner : MR. K DAS

Advocate for the Respondent :

Linked Case : RSA/371/2017

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Advocate for the applicant(s): Mr. MA Sheikh

Advocate for the respondent(s): X X

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

24.04.2024

This is an application under Section 5 of the Limitation Act 1963 for condoning the delay of 808 days in filing the Regular Second Appeal against the judgment and decree dated 27.11.2014 passed in Title Appeal No.48/2011 by the learned Civil Judge Dhubri.

2. It appears from the records that pursuant to the filling of the instant

application, this Court had issued notice upon the sole respondent on 06.12.2017. The records reveal that service could not be effected upon the sole respondent. This Court further takes note of the fact that directions were also given to effect service upon the respondent by way of Dasti mode. However, then also neither service had been effected by way of Dasti mode nor by usual service and on the other hand, it is seen that on various occasions time has been sought for submitting affidavit of service.

3. This Court had also perused the grounds explaining the delay in filing the accompanying appeal. A perusal of the application reveals that the grounds mentioned in the application is that as the applicants did not have the financial resources to bear the cost of the appeal and to pay the fees of the advocate, the appeal was not filed in time. Let this Court now consider as to whether the said grounds which have been assigned can be a sufficient cause within the meaning of Section 5 for condoning the delay.

4. The Supreme Court recently in a judgment in the case of *Pathapati Subba Reddy (Died) by LRs and others Vs. Special Deputy Collector (LA)* reported in *2024 SCC OnLine SC 513*, after making a copious detail of all the well settled precedents had summarized the principles for condoning the delay. Paragraph 26 of the said judgment being relevant is quoted hereinbelow:

"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."

5. From a perusal of the various clauses in paragraph 26 as quoted hereinabove, it would be seen that the Supreme Court duly observed that the provisions of 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. It was further observed that 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. It was categorically observed that the 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.

6. Let this Court now take note of the application and the grounds which have been mentioned. From the perusal of the said application, it would be seen that the sole ground mentioned is on account of financial constraints of the applicants which was beyond their control to file the said appeal within time. This Court has also perused the copy of the plaint and the documents which have been enclosed with the Memo of Appeal. Nowhere there is any mention that the applicants who are the plaintiffs were at any point of time facing financial difficulties.

7. In the instant application so filed, there is no mention as regards any new

reason for which any financial difficulties had arisen. Merely by stating that the applicants could not procure the financial resources to pay to the counsel in the opinion of this Court would not constitute a sufficient cause for condoning the delay. More so, when such an application is bereft of material particulars as to what amount was sought and when sought. Additionally how the applicants could manage the amount and when the amount was paid. Accordingly, this Court finds no reason for condoning the delay for which the instant application stands dismissed.

8. Taking into account that the instant application had been dismissed, the accompanying regular second appeal being barred by limitation cannot be entertained.

JUDGE

Comparing Assistant