

(2004) 12 GAU CK 0036

In the Gauhati High Court

Case No : Misc. Case (CRP) No. 07 (AP) of 2004

Kobe Ete

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Assam Frontier (Administration of Justice) Regulations, 1945 — Section 47, 48, 50, 51, 52
Contract Act, 1872 — Section 25
Easements Act, 1882 — Section 2, 25, 26
Government of India Act, 1935 — Section 92(2)
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2006) 2 GLR 221 : (2005) GLT 626 Supp

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : B. Habang, H.R. Habang, T. Hableng and T. Michi, for the Appellant;
G. Deka and N. Tagia, for the Respondent

Judgement

H.N. Sarma, J.—Heard Mr. T. Michi, the learned Counsel for the petitioner and Mr. N. Tagia, learned Counsel for the respondent No. 4 and Ms. G. Deka, learned Govt. Advocate for the respondent No. 1, 2 & 3.

2. By this application the petitioner prayed for condoning the delay of 41 days (?) in filing the Civil Revision Petition No. 136/2004. Notice of the aforesaid application was issued on 1.7.2004 in pursuant to which the Respondent No. 4 has filed his objection resisting the prayer for condoning the delay of 41 days.

3. In the affidavit in opposition the respondent No. 4 has denied the correctness of the statement made in the petition. The petitioner's case is that, she is a lady staying at Along in the West Siang District and she entrusted her case with an Advocate namely Sri Gilli Ate to file the present revision petition. But later on it was found that the said Advocate did not file the petition and has left Itanagar. After constant persuasion the petitioner could obtain the necessary papers of the case from the said Advocate and there after she entrusted with the present

Advocate for filing the case and in the process there has been delay of 41 days for filing the revision. The petitioner is a layman and the delay in filing the petition has been caused for the reasons beyond her control. Accordingly, Mr. T. Michi, learned Counsel for the petitioner submits that the delay in filing the revision petition should be condoned,

4. At this stage Mr. N. Tagia, learned Counsel for the respondent No. 4 has raised an issue regarding the maintainability of the present Misc. Case. Mr. Tagia has pointed out that u/s 50 of The Assam Frontier (Administration of Justice) Regulation, 1945, the High Court may, on application or otherwise, call for the proceedings of any original case or appeal decided by the Deputy Commissioner and not appealable under this Regulation and may pass such orders as it may deem fit. Thus, the High Court is entrusted with the power of revision against the orders mentioned in Section 50 of the regulation, Section 51 provides "every petition of appeal u/s 47 or Section 48 and every application u/s 50 shall be accompanied by a copy of the order against which the appeal or application is made, and shall be filed within thirty days of the date of such order, excluding the time taken in procuring a copy of the order". u/s 52 it is provided that the High Court shall follow the principles of Indian Limitation Act, 1908 in disputes between persons who are not indigenous to the Union Territory of Arunachal Pradesh. Further Section 29 of the Limitation Act, 1963 provides that, "where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law".

5. Referring to the aforesaid sections Mr. N. Tagia has submitted that the Assam Frontier (Administration of Justice) Regulation, 1945 being a Special/local law and under the provisions of Section 52 of the said Regulation not having provided that the Limitation Act would be applicable for indigenous persons, the provision of Section 5 of the Limitation Act is not applicable and the delay in filing the petition cannot be condoned.

6. Mr. T. Michi, on the other hand has pointed out that this point has not been taken out in the affidavit in opposition filed by the petitioner and accordingly it may not be permitted to raise at the stage of hearing. He further submits that the practice of this Court since the days of its establishment is that the delay in filing any such revision petition by an indigenous person is being condoned by this Court by applying the provision of Section 5 of the Limitation Act in case there is any delay and the practice prevalent so long should not be disturbed and it should be allowed to be condoned. It has been further submitted that on proper interpretation of Section 52 of the Regulation, the aforesaid contention of the learned Counsel for the respondent is not tenable.

7. Since the question regarding the maintainability of the petition, as raised by Mr. Tagia, goes to the very root of the case and the matter is of importance, I do not like to throw out the objection on the aforesaid ground raised by the petitioner. The utility of the state of limitation has not been the matter of any dispute. It is stated that the Act of Limitation is a set of repose, peace and justice. It is stated to be repose because it extinguishes state demand and quits title. In other words, controversies are restricted to a fixed period of time otherwise they would become immortal and ever lasting. Limitation secures peace as it ensures security of rights and secures justice as by lapse of time evidence in support of right may destroy. Limitation is thus rests on sound public policy. On the expiry of the period of limitation a valuable right accrues upon the other party. The provisions of applicability of the limitation act are also enshrined in the Assam Frontier (Administration of Justice) Regulation, 1945. Going through the various provisions of the said regulations it cannot be said that the scheme of the Act altogether excludes the law of limitation rather, in the various clauses of the aforesaid regulations, it recognises the need of applicability of the law of limitation. Limitation as provided by various statutes, not only prescribes the period of limitation within which period the party must approached the authority, it also provides, in certain circumstances, under which a period may be excused for not approaching the authority within the period of limitation. Under the Limitation Act, 1908 (since repealed) and the Limitation Act, 1963 also vide Section 5 provides such a power upon the Court to extend the prescribed period of limitation in certain cases, when the appellant or the applicant satisfies the court that, he has sufficient cause for not preferring the appeal or petition within the specific period of limitation. Turning to Section 29 of the Limitation Act 1963, the said section is a saving section incorporated in the 1963 Act. Section 29 of the Limitation Act 1963 is quoted herein below:

Section 29(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872(9) of 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Section 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian Easement Act, 1882 (5 of 1882), may for the time being extend.

8. Section 51 of the Assam Frontier (Administration of Justice) Regulation, 1945 provides that "every petition of appeal u/s 47 or Section 48 and every application u/s 50 shall be accompanied by a copy of the order against which the appeal or application is made, and shall be filed within thirty days of the date of such order, excluding the time taken in procuring a copy of the order". u/s 50 of The Assam Frontier (Administration of Justice) Regulation, 1945, the High Court may, "on application or otherwise, call for the proceedings of any original case or appeal decided by the Deputy Commissioner and not appealable under this Regulation and may pass such orders as it may deem fit". Here the High Court can exercise revisional power on two counts : (1) by suo moto, and (2) by application of a party. If the High Court, in a given case, thinks it prudent to exercise revisional power suo moto, in that event no question arises as to the applicability of the period of limitation of 30 days as provided in Section 51. The period of 30 days as provided in Section 51 appears to be applicable only in cases when the revisional power is exercised on the application of the private party.

9. Again Section 52 of the Regulation provides as follows "The High Court, the Court of Deputy Commissioner, Assistant Commissioner shall be guided by the spirit, but shall not be bound by the letter, of the Code of Civil Procedure, 1908 and shall follow subject to any express provisions of these rules, in principles of the Indian Limitation Act, 1908 in disputes between persons who are not indigenous to the Union Territory of Arunachal Pradesh". Section 52 expressly provides that the High Court shall follow, subject to the expressed provisions of these rules, the principles of Indian Limitation Act, 1908, in disputes between persons who are not indigenous to the Union Territory of Arunachal Pradesh. Section 52 does not speak of anything specifically regarding applicability of the Limitation Act so far the indigenous persons are concerned.

10. The preamble of the Assam Frontier (Administration of Justice) Regulation, 1945 provides as follows:

A Regulation to consolidate and amend the law governing the administration of justice in the Frontier Tracts of Assam.

Whereas it is expedient to consolidate and amend the law governing the administration of justice in the Balipara, Lakhimpur, Sadiya and Tirap Frontier Tracts of Assam.

Now, therefore, the Governor of Assam, in exercise of the powers conferred by the Sub-section (2) of Section 92 of the Government of India Act, 1935, is pleased to make the following Regulation:.

11. The aforesaid regulation having been erected for governing the administration of justice in the Balipara, Lakhimpur, Sadiya and Tirap Frontier Tracts of Assam is a local law within the meaning of Section 29 of the Limitation Act, The Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter referred to as 1945 Regulation) to some extent ameliorate the other substantive provisions of laws such as the Code of Civil Procedure, Code of Criminal

Procedure and the like. The said 1945 Regulation had to be enacted to suit the need of the people of the aforesaid tract.

12. Now having satisfied the requirement of Section 29(2) of the Limitation Act so far the provisions regarding the local law or special law is concerned, we are to see at this stage whether Section 52 of the 1945 Regulation can be interpreted to exclude the provisions of Sections 4 to 24 of the Limitation Act, 1963 in the context of the said 1945 Regulation. On a bare reading of Section 29(2) shows that such exclusion is permissible so far as and to the extent to which they are not expressly excluded by the special or local law. Section 52 of the 1945 Regulation incorporates specific provisions regarding applicability of the principles of the Limitation Act so far the persons who are not indigenous to the present State of Arunachal Pradesh. It has not provided expressly about the applicability or non-applicability of the provisions of the Limitation Act so far the indigenous persons are concerned and Section 52 is silent about it. On the other hand, as discussed hereinabove, the scheme of the 1945 Regulation do not excluded the applicability of the provisions of the limitation altogether. Section 29(2) of the Limitation Act clearly indicates that such special or local law must provided the period for limitation under such laws and for computing the period of limitation under such special or local law, the provisions as contained in Sections 4 to 24 (inclusive) as found in the Limitation Act shall apply. Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down therein are satisfied and once they get satisfied, the provisions contained in Sections 4 to 24 of the Limitation Act shall apply to such proceedings which obviously means that the procedural scheme contemplated by these sections of the Limitation Act would be applicable in case of filing appeal/revision under the provisions of special or local law.

13. Turning to expression "expressly excluded" in Section 29(2) of the Limitation Act, the said expression is clearly demonstrative. It signifies exclusion by wants. It will not mean exclusion by a process of construction or by reasoning. If we are to exclude the provisions of applicability of the principles of the Indian Limitation Act, then we are to go for reasoning to the extent that as the said Section 52 makes a provision of applicability of the Limitation Act so far the persons who are not indigenous to the State of Arunachal Pradesh, therefore, the persons who are indigenous to the State of Arunachal Pradesh, are excluded. Such a construction will go against the provisions of the expression "expressly excluded".

14. Another aspect of the matter also cannot be lost sight out. The consistent practice prevalent in this part of the country is in favour of applicability of Section 5 of the Limitation Act in case there occurs delay in filing a revision petition u/s 50 of the 1945 Regulation for sufficient cause. The aforesaid practice is being followed by this High Court since its inception, which is by now, has attained the force of law. The people of the State of Arunachal Pradesh are now accustomed with the applicability of the said provision of Section 5 of the Limitation Act and

all the litigants who are required to approach the court, and when the period of limitation is expired for sufficient reason, they take shelter u/s 5 of the Limitation Act for condoning the delay in filing the appeal/application by showing sufficient cause. The aforesaid practice should not be lightly uprooted or revoked. In fact, I do not find any justification for revoking the aforesaid practice, which is being followed for more than half a century by now by this High Court.

15. In view of the aforesaid discussions and decisions, I hold that the provision of Section 5 of the Limitation Act is applicable when there occurs delay in filing a revision application u/s 50 of The Assam Frontier (Administration of Justice) Regulation, 1945, by an indigenous person of Arunachal Pradesh. The objections raised by Mr. N. Tagia regarding non-maintainability of the petition are not sustainable. Mr. Tagia in his usual fairness, however, has not raised any objection on the merit of the case. On perusal of the averments made in the application u/s 5 of the Limitation Act and other materials on record I find that there is sufficient cause for condoning the delay in filing this application. No willful laces or negligence can also be attributed to the petitioner.

16. Accordingly the delay of 41 days in filing the revision petition is condoned, and the Misc. Case is allowed making however no order as to costs.