

(2009) 05 GAU CK 0073

In the Gauhati High Court

Case No : CM. Appeal No. 139 of 2008 and in Regular Second Appeal No. 7 of 2008

M. Thangbika and Another

APPELLANT

Vs

C. Lianghinga and Another

RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

Assam High Court (Jurisdiction Over District Courts) Order, 1954 — Order 3

Citation : (2009) 4 GLT 586

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : M. Guite, for the Appellant; Helen Dawngliani, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. M. Guite, learned Counsel for the applicants as well as Mrs. Helen Dawngliani, learned Counsel for the Respondent No. 1.

2. There is an order passed by this Court on 20.3.2009 to proceed with ex-parte hearing against the Respondent No. 2 as she has failed to appear despite notice being served on her.

3. This application is presented under Order 3 of the Assam High Court (Jurisdiction over District Council Courts) Order, 1954 for condoning the delay of 192 days in preferring the connected RSA No. 7/2008. The judgment and order passed by the District Council Court in Review judgment in Civil Suit No. 15/2007 has been challenged in the RSA No. 7/2008. In explaining the cause of delay of 192 days in filing the aforesaid appeal, the applicants have taken the following grounds:

1. That the judgment and Order dated 16.01.2008 passed in Review judgment on Civil Suit No. 15 of 2007 was received by the applicants only after 10 days.

2. That the applicants are poor cultivators. They have to muster necessary

finance so as to go to Aizawl from Saiha and engage a counsel. They could somehow manage to go to Aizawl only on 25.03.2008 along with the brief after availing financial assistance from their relatives and friends.

3. That the documents which the applicant brought along with them were incomplete and they had to return to Saiha on 31.03.2008.

4. That applicants collected the various applications and replies submitted before the Ld. Trial Court and the Appellate Court and it was received at Aizawl only on 06.05.2008.

5. That since some of the said documents are in local language except the impugned judgments it is required that they be translated into English. The process of translation takes about three weeks as an interpreter acquainted in Mara language are not readily available. Thus the translation of document was completed sometime in 30.05.2008.

6. That the drafting of the Memorandum of Appeal and connected applications was completed by the end of June. However, the judgment and Orders sought to be challenged are photocopy of the original and certified copy is required to be obtained from the Ld. Lower Courts.

7. That the applicants are intimated to obtain certified copies of the judgment and Orders sought to be challenged sometime in the first week of July, 2008.

8. That an application was made by the applicants for issue of certified copies of the impugned judgments on 09.07.2008. The certified copies were delivered to the applicants on 20.10.2008.

4. According to Mr. M. Guite, the actual delay in filing the connected appeal is only 89 days although, delay has been mentioned in the cause title as 192 days. From the aforesaid 192 days, 103 days required/spent for obtaining the certified copy of the judgment and order aforesaid should be subtracted. The delay of 89 days is due to causes beyond the control of the applicants and the same may be condoned for the ends of justice without applying the strict principle of law of limitation.

5. Mrs. Helen Dawngliani, learned Counsel for the Respondent No. 1 vehemently opposes the application for condonation of delay and the objection has been taken in Paragraphs 7 and 8 of the counter filed on behalf of the Respondent No. 1, which are quoted below:

7. That with regard to the statement made in paragraph No. 3(iii), (iv) and (v) of the application, I say that the grounds/reasons stated therein are meaningless and unreasonable. In fact, as stated in ground No. (ii) of the application, the impugned Order was received by the applicant on 25.3.2008 and no explanation whatsoever was given by the applicant the steps taken in pursuing the case in between the date of receipt of the Order and the return to Saiha from Aizawl. As per the statement, the applicant returned to Saiha on 31.3.2008 to collect the

required documents, however, the applicant managed to obtain the required documents only after a lapse of nearly two months on 6.5.2008. In this regard, it may be stated that the road communication between Saiha and Aizawl is one of the busiest traffic within the state and even by road transport the two places could be reached in a day throughout the year. It is also unreasonable to take nearly a month in translation. The above acts of the applicants clearly exhibit the careless and negligent attitude of the applicants in pursuing the case. From the action of the applicants, it appears that the appeal has been filed belatedly as an afterthought. As such, no reasonable or sufficient grounds have been made out to condone the delay.

8. That with regard to the statements made in paragraph Nos. (vi), (vii) and (viii) of the application, it is reiterated that the time spent as indicated is unreasonable. In fact, it is within the knowledge of a legal practitioner that before filing an appeal a certified copy of the order under challenge is to be obtained. It is not that only at the time of drafting the appeal certified copy can be obtained. It is within their knowledge right from March, 2008 that appeal was to be preferred and it is unreasonable to apply for certified copy of the Order impugned only in the month of July, 2008. Further the time taken in delivering the said copy is also attributable to the applicant himself. If the applicant had actively pursued the case he could have expressed the urgency to the learned Lower Court which would certainly expedite issuance of certified copy required which would not be difficult as there are not many cases pending in such courts.

6. Apart from the aforesaid grounds of objection, the Respondent No. 1 has also filed an additional written objection. Mrs. Helen Dawngliani relied on the grounds taken in Paragraph 5 of the said additional affidavit, which are quoted below:

5. That it may be stated that from the time the answering Respondent took possession of the disputed property, he had been doing some minor repairing and renovations of the suit land/house. In fact, from the time the period of appeal lapsed after the passing of the impugned judgment and Order dated 16.1.2008 the answering Respondent have been constructing the house and all together he must have incurred not less than Rs. 11 lakhs within the said period of delay for construction of the house. As such, the inordinate delay in filing the present appeal without any reasonable explanation has greatly prejudiced the answering Respondent. In fact, as per the impugned judgment and Order dated 16.1.2008 the answering Respondent had to be paid back his loaned amount on or before 5.2.2008 and it was also clearly mentioned that the period of appeal was 60 days from the date of the Order. As no repayment was made to the Respondent and no appeal was filed within the stipulated time, it was only but natural that Respondent started developing his house and the appeal/condonation of delay application was moved only on 30.10.2008.

7. On reading the grounds taken for condonation of delay, it is apparent that the applicant No. 1 received a copy of the judgment and order dated 16.1.2008 on 26.1.2008 that is, within 10 days from the date of passing of the impugned

order. He could approach his counsel at Aizawl for consultation only after 58 days who advised him to furnish complete documents/papers for preparation and filing of the appeal. The applicants were able to obtain necessary papers/documents and meet the counsel again only after 35 days and hand over the brief to his counsel. After receipt of the brief, his counsel prepared and filed the appeal after 31 days. No explanation has been offered as to how and why the applicant could approach the counsel at Aizawl only after 58 days from the date of receipt of the impugned judgment and order on 26.1.2008. However, it has been submitted by Mr. M. Guite that the applicants applied for certified copy of the judgment and order on 9.7.2008. There again, there is no explanation whatsoever as to why and how the applicants could apply for certified copy of the judgment and order dated 16.1.2008 after a lapse of about 5 and half months. The approach made by the applicants in obtaining the certified copy of the judgment and order dated 16.1.2008 after a period of more than five and half months demonstrates negligent attitude, carelessness and due diligence.

8. Moreover, it has been clearly stated in Paragraph 5 of the additional affidavit of the Respondent No. 1 that he has incurred almost Rs. 11 lakhs for construction of a house on the land in dispute which was under his continued possession during trial and the applicants/Appellants, did not prefer any appeal during 60 days time allowed by the review court vide impugned judgment and order dated 16.1.2008.

9. Mrs. Helen Dawngliani, learned Counsel for the Respondent No. 1 placing reliance on a decision rendered by this Court in the State of Tripura and Ors. v. M/s Bhowmik and Company, reported in 2004 (Supp.) GLT 58 submits that the prayer for condonation of delay is required to be rejected if the explanation are found sketchy and not truthful and it cannot be condoned if it would cause prejudice to the Respondents. According to Mrs. Helen, the Respondent No. 1 would suffer irreparable loss if delay in question is condoned without taking into consideration that she has spent about Rs. 11 lakhs for construction of the building.

10. Having considered the submissions made by the learned Counsel for the parties, I find that the applicants have not been successful in establishing the ground for condonation of delay in question in-as-much as they have not been able to show bona-fide action without being negligent or being prevented by some reasons beyond their control in preferring the appeal.

11. In view of the above, the application for condonation of delay stands rejected.