
(2008) 01 GAU CK 0043
In the Gauhati High Court

Rihon Singh Janoh

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 3

Citation : (2008) 1 GLT 1065

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—The sole question which falls for consideration in this miscellaneous application is whether there is satisfactory explanation by the applicant for a delay of 1,666 days in filing the application for restoration of his writ petition? The case of the applicant is that he had filed Civil Rule No. 1747 of 1996 in the Principal Seat of this Court at Guwahati questioning the legality of the order dated 19.2.1996 passed by the Chief Executive Member of the Khasi Autonomous District Council, Shillong and that the case was subsequently transferred to this Bench, which re-numbered the case as W.P.(C) No. 267(SH) of 2000.

2. According to the applicant, the dismissal of the writ petition on 24.9.2001 by this Court in default of prosecution was learnt by his counsel on 29.9.2001, but his counsel could not inform him immediately as he happened to reside in the interior part of West Khasi Hills District. However, on receipt of the letter from his counsel intimating him of the news, the applicant immediately contacted him, who prepared the application for restoration of the dismissed writ petition and filed the same, after serving a copy whereof to the respondents, before this Court sometime in the month of December, 2001. It is asserted by the applicant that his counsel was under the impression that the application would come up for

consideration without delay, but when it was never listed for consideration, he made an inquiry in the Registry from time to time as and when he appeared before this Bench (the counsel for the applicant is admittedly from Guwahati), which did not prove fruitful. According to the applicant, it was only on 28.3.2006 that his counsel could realize that the original case number of Civil Rule No. 1747 of 1996 had been re-numbered as W.P.(C) No. 267 (SH) of 2000 in this Bench, but the case record could not be traced out, which prompted his counsel to inform the Registrar in writing on 12.4.2006 about the missing record and requested him to locate the same for listing. It is further asserted by the applicant that his counsel was subsequently informed that though the case record was located, the miscellaneous application in question could not be traced out whereupon his counsel, in consultation with his senior, filed this application along with an application for restoring the dismissed writ petition. It is the case of the applicant that his earlier application must have been lost as he filed the same in the old case number of Civil Rule No. 1747 of 1996. According to the applicant, the delay, though somewhat inordinate, was occasioned by circumstances beyond his control or of the control of his counsel, and was not due to his negligence or that of his counsel, and, as such, the delay deserves to be condoned.

3. The respondent Nos. 1 to 5 and the respondent No. 8 vehemently opposed the application by filing separate written objections. The case of the respondent Nos. 1 to 5, as reflected in their written objection, is simple and to the point, which is that the causes shown by the applicant for condonation of the delay are not only insufficient but also artificial, illogical and totally unacceptable. It is pointed out by them that the writ petition came up for hearing on numerous occasions, but could not be taken up by this Court due to non- prosecution, which ultimately compelled this Court to dismiss the same by the order dated 24.9.2001. Since the applicant has failed to give satisfactory explanation for the inordinate delay, this application is liable to be dismissed with costs. The case of the respondent No. 8 is also in the same vein. In addition to that, the respondent No. 8 points out that the writ petition, on its transfer, was received by this Registry on 7.9.2000, and was thereafter listed for hearing on as many as 21 occasions between 31.11.2000 and 24.9.2001, but the applicant remained absent throughout, which ultimately resulted in the dismissal of the writ petition.

4. The answering respondent vehemently denies that the applicant was not aware of re-numbering of the case on its transfer from the Principal Seat or that any application for restoration of the dismissed writ petition was ever filed by him in the month of December, 2001. It is pointed out by the answering respondent that the Registrar in his note, with reference to the letter dated 12.4.2006 of the counsel for the applicant, had clarified that the miscellaneous application claimed to have been filed by the applicant was never filed by him nor was it on the record of the Registry of this Bench. It is contended by the answering respondent that the applicant has slept over his right for over four years and 206 days, and is, therefore, guilty of laches, gross negligence or deliberate inaction. In the

absence of sufficient cause shown by the applicant, submits the respondent No. 8, the application for condonation is liable to be dismissed with costs.

5. Mr. Haren Das, the learned Counsel for the applicant, makes a four-fold contention. Firstly, it is his contention that the instant case involves the livelihood of thousands of villagers of a particular elaka; these villagers have been cultivating the disputed land since the time of their forefathers. If the delay is not condoned, according to the counsel for the applicant, grave prejudice shall be caused to these villagers, who would be deprived of an opportunity to establish their case, which is otherwise meritorious. It is also submitted by the learned Counsel that inasmuch as a writ proceeding is not a proceeding within the meaning of "proceedings" in terms of the Explanation to Section 141 of the Code of Civil Procedure, there is no period of limitation for filing an application for restoration of a dismissed writ petition.

6. Moreover, contends the learned Counsel, following the decision of this Court in *State of Meghalaya v. U. William Myansong* (1987) 2 GLR 221, the law of limitation or delay is not applicable in the State of Meghalaya. The learned Counsel further submits that even assuming without admitting that the law of limitation or doctrine of laches are held applicable in the State of Meghalaya, and further that there is negligence on the part of his counsel, the applicant ought not to be penalized therefor. In support of his contention, the learned Counsel strongly relies on the decision of this Court in *Bagisha Dherkar and Ors. v. Harakanta Bhuyan* (1995) 3 GLT 514 and that of the Apex Court in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, . Per contra, Mr. V.G.K. Kynta, the learned Counsel for the respondents, referring to the affidavit-in-opposition of the respondent No. 8, submits that there is absolutely no explanation worth considering, much less satisfactory explanation, to enable this Court to exercise its discretionary jurisdiction for condoning the delay. Moreover, he contends, the facts narrated by the applicant who occasioned the delay are inherently improbable and cannot be accepted as true. When the applicant cannot furnish satisfactory explanation for the delay of 1,666 days, which is the condition precedent for condonation of delay, according to the learned Counsel, the application is liable to be dismissed with cost. Strong reliance is placed by him upon the following decisions to buttress his contentions:-(a) *P.K. Ramachandran Vs. State of Kerala and Another*, , (b) *Collector of Jorhat v. N.A. Rahman and Ors.* 1985 (2) CCC 8, (c) *Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others*, , (d) *State of Assam v. S. Rai* 2004(1) GLT 344, (e) *Union of India v. Wood Crafts Products Ltd.* 2001(1) GLT 34, (f) *State of Assam v. Miss Mariam Nessa* 2001(3) GLT 298, (g) *Premananda Noma v. Basanta Kr. Ghosh* 2000(2) GLT 575 and (h) *Union of India and Ors. v. Sandhu Sons* 1999(3) GLT 610.)

7. I have given my anxious consideration to the rival submissions made at the bar. It is true that following the decision of this Court in *U. William Myansong* case (*supra*), the provisions of Limitation Act, 1963 are not applicable in the

State of Meghalaya, and, consequently, it can be said that the bar of Limitation prescribed by Section 3 of the aforesaid Act will not operate against the applicant. It is also an equally settled law, without reference to cases that the limitation Act, 1963 does not apply to writ petitions. However, one of the well-established grounds for refusing relief under Article 226 of the Constitution is that the petitioner is guilty of laches and delay. It is imperative, if the petitioner wants to invoke extraordinary relief available under Article 226 of the Constitution that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is an adequate ground for refusing to exercise the discretion. Thus, in an appropriate case, the High Court may not exercise its discretion and may refuse to grant relief if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the other party. In this context, the observations of the Apex Court in *P.S. Sadasivaswamy Vs. State of Tamil Nadu*, are apt, which are in the following terms:

It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.

8. The real difficulty, however, arises about the measure of delay. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay, and is otherwise guilty of laches. Ultimately, it is left to the discretion of the High Court and like all matters, which are left to the discretion of the High Court, the discretion, in this matter also, must be exercised judiciously, and not arbitrarily. The question as to whether a litigant can be held responsible for the negligence of the counsel should be decided on the facts of each case. Normally, a litigant cannot be held responsible for the negligence of his counsel, but this is not a rule of thumb, for there can be remission on his part. The test is whether negligence, inaction or want of bonafides can be imputed to the applicant.

9. The exercise by the Court of its discretion to excuse the delay would, to a certain extent, be detrimental to the respondent who has in the meanwhile acquired valuable rights, but, in my judgment, the questions shall have to be approached from the point of view of the applicant's conduct and not of the advantage gained by the respondent. For example, where the petitioner himself is found to be indolent and has failed to be alert and vigilant and slept over the matter, the non-giving of information by his counsel regarding passing of the order in question and date of the hearing, that by itself cannot be held to be a

sufficient cause for condonation of delay. The reason is that such conduct of the party occasioning the delay might fairly be regarded as equivalent to a waiver of the remedy, which will disentitle the discretionary relief of this Court under Article 226 of the Constitution. I am not unmindful of the observations of the Apex Court in *Rafiq and Another Vs. Munshilal and Another*, that contesting parties should not suffer for lapses on the part of their counsel and that rejection of the application for condonation is not justified as the party should not suffer for the inaction, deliberate omission or misdemeanor of his agent and lawyer. In that case, there was apparently a delay of some 14 days in presenting the appeal. The Apex Court held there that a party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a counsel, the party may remain supremely confident that the lawyer will look after his interest. At the time of hearing of the appeal, the personal appearance of the party is not only required but hardly useful. Therefore, a party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. The Apex Court then posed, "What is the fault of the party, who having done everything in his power expected of him, would suffer because of the default of his advocate?" It is against the backdrop of the above factual scenario that those observations have been made by the Apex Court. In my opinion, the doctrine of laches governing a writ petition will be equally applicable to an application for restoring a writ petition, which is dismissed in default of prosecution. Therefore, if such an application is filed after inordinate delay and the delay is not satisfactorily explained, the same is liable to be dismissed on the ground of laches.

10. In the case at hand, the facts stated in the application of the applicant read with the affidavits of the respondents unmistakably demonstrate gross negligence and callousness on the part not only of the counsel for the applicant but also on the part of the applicant himself. Assuming for the time being that the application for restoration was actually filed by his counsel in the month of December, 2001, why it took him about five years to discover that the original case number was re-numbered as W.P.(C) No. 267(SH)/2000 on its transfer to Shillong Bench? As a lawyer admittedly appearing before this Bench from time to time, he is deemed to have been well conversant with the practice and procedure of the outlying Benches. Surely, even at the time of filing such an application, he must have already known the re-numbering of the case by this Registry. That apart, it is improbable that this counsel would really wait for five long years to make an inquiry over the non-listing of his case. In any case, the note of the Registrar, which was prepared by him in the discharge of his official duty and, therefore, has presumptive value, flies in the face of his claim that he filed an application for restoration of the dismissed writ petition in the month of December, 2001.

11. That is not all. The subsequent events of the dismissal of this application in default for two more times speak volumes about the negligent and irresponsible manner in which the case has been conducted. Accepting that the delay has been occasioned by the negligence of this counsel, and he should not, therefore, suffer for the negligence or deliberate inaction of his counsel, the applicant is not yet out of the wood. What was he doing for five long years? He may be a villager or may belong to the remote interior part of West Khasi Hills and may not have knowledge of the court's procedure. It is also true that in writ proceedings, the personal appearance of the applicant is not necessary, but then the more important question is as to how he could be so indifferent, uncaring and unconcerned about the progress of his case for five years. The delay in this case is not 20 or 30 days or, for that matter, even for a year or two, but for 1,666 days. When the applicant himself is demonstrably proved to be indolent and grossly negligent in prosecuting his case, he cannot be allowed to take advantage of the negligence of his counsel. The applicants is certainly guilty of contributory negligence.

12. In the absence of satisfactory explanation for the inordinate delay, I am of the opinion that the applicant is unable to make out any case for condonation of delay involving 1,666 days.

13. For what has been stated in the foregoing, I do not find any merit in this application, which is hereby dismissed. However, on the peculiar facts and circumstances of the case, the parties are directed to bear their respective costs.