
(2011) 03 GAU CK 0019
In the Gauhati High Court
Case No : C.R.P. No. 8 of 2010

Smt. Vanthangi (L)

APPELLANT

Vs

The State of Mizoram and Others

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A, 115
Limitation Act, 1963 — Section 5

Citation : (2011) 4 GLR 396

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : Joel J. Denga, Rualkhuma Hmar, H. Lalremsanga and P.C. Prusty, for the Appellant; Zochhuana and R. Lalawmpuia, for the Respondent

Final Decision : Dismissed

Judgement

H. Baruah, J.—Heard Mr. P.C. Prusty, learned Counsel for the revision Petitioner. Also heard Mr. R. Lalawmpuia, learned Counsel for the Respondent No. 5.

2. As agreed to by the counsel of the parties, this revision is taken up for disposal at the order stage.

3. This instant revision is directed against the judgment and Order dated 16.3.2010 passed by the Additional District and Session Judge, Aizawl in Civil Misc. Petition No. 110 of 2009 arising out of RFA No. 7 of 2009.

4. RFA No. 7 of 2009 was filed before the Court of Additional District and Sessions Judge, Aizawl against the judgment and order dated 25.6.2009 passed by Senior Civil Judge in Civil Suit No. 4 of 2001 along with an application for condonation of delay u/s 5 of the Limitation Act, 1963 for condoning the delay of 46 days in preferring the connected appeal (RFA No. 7 of 2009). The said application was registered as Civil Misc. Appln. No. 110 of 2009.

5. From the impugned judgment and order it appears to this Court that one Mr. Rualkhuma Hmar, advocate filed the application for condonation of delay in the

name of the Appellant Smt. Vanthangi alongwith the connected appeal (RFA No. 7 of 2009) who did never execute any power in favour of Mr. Rualkhuma Hmar, advocate. When the application came up for hearing it was never objected/resisted by the State Respondents. However, the Respondent No. 5 therein objected the application for condonation of delay vehemently on the ground of filing the same by Mr. Rualkhuma Hmar, advocate without any authority from the applicant Smt. Vanthangi. From the impugned order it also appears to as that the application filed for condonation of delay u/s 5 of the Limitation Act, 1963 was not supported by an affidavit as required under Order 41 Rule 3A CPC. The court after taking note of the above two grounds as pointed out by Respondent No. 5 dismissed the application filed u/s 5 of the Limitation Act, 1963.

6. There is no denial from the revision Petitioner about the shortcomings as indicated above. Mr. P.C. Prusty, learned Counsel for the revision Petitioner in his usual fairness admitted that the application for condonation of delay was not supported by an affidavit and that too the advocate was not authorised by the applicant Smt. Vanthangi. On the other hand Mr. R. Lalawmpuia, learned Counsel for the Respondent submits that the impugned order does not warrant any interference from this Court, in view of the shortcomings as indicated in the impugned order passed by the Appellate Court. According to him there is apparently not error and illegality in the order passed by the appellate court, the impugned Order therefore is not liable to be set aside in the exercise of jurisdiction u/s 115 of the CPC.

7. Rule 3A of Order 41 CPC states for filing of an application for condonation of delay which can be reproduced as under:

3A. Application for condonation of delay:

(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the Appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) ...

(3) ...

Apparently the application being not supported by an affidavit the same cannot be accepted and acted upon. The learned appellate court therefore, appears to have not committed any error or illegality in dismissing the application for condonation of delay filed under the Limitation Act, 1963. This Court therefore, finds no ground to interfere with the impugned order passed by the appellate court.

8. The revision accordingly stands dismissed.

9. However, for the ends of justice liberty is given to the applicant to file an appeal with application for condonation, if so advised.