
(2001) 05 GAU CK 0006

In the Gauhati High Court

Case No : Misc. Case No. 38 of 2001 and Civil Revision Petition No. 36 of 2001

State of Assam and Another

APPELLANT

Vs

Shahnasim and Others

RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Limitation Act, 1963 — Section 2, 5

Citation : (2001) 2 GLT 169

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : H. Rahman, for the Appellant; D.K. Bhattacharjee, R.K. Bhuyan and S. Ali, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—This Misc. application has been filed by the State of Assam u/s 5 of the Limitation Act, 1963 for condonation of 22 days delay in preferring Revision Petition No. 36/2001 directed against the order dated 12.5.2000 passed by the learned Civil Judge - (Sr. Division) No. 1, Guwahati in T.S. No. 1/1991.

2. I have heard Mr. DK Bhattacharjee, learned senior counsel for the Caveator/O.P. and also Mr. H. Rahman, learned State counsel.

3. The Opp. Party filed T.S. No. 1/1991 against the State of Assam and notices were duly served upon the Govt. Advocates in the month of January, 1991 itself But the Defendant State failed to submit any written statement. Thereafter the learned Trial Court passed an order on 29.1.91 directing that the case would be heard ex-parte against the Defendant Nos. 1 and 2. Evidence of the Plaintiff No. 2 was also recorded and he was discharged on 26.2.99 after cross-examination by the Defendant Nos. 3 to 26. The learned Govt. Pleader also appeared in the connected Misc. Case Nos. 29/92 and 32/96 filed under Order, 39 Rule 1 and 2 of the Code of Civil Procedure. Despite that they did not take any steps to file written statement, Thereafter an application was filed for vacating the order

dated 29.1.91. This application was rejected on 12.5.2000 by the impugned order. The Petitioner has challenged this order in the instant revision petition filed after 22 days of the limitation period.

4. Mr. Bhattacharjee, learned senior counsel submitted that the disputed land belonged to the predecessor-in-interest of the Plaintiff-Respondents where a market known as Platanbazar Daily Market was established. This land was acquired by the State, but eventually as the State failed to pay the compensation amount, an agreement was entered into between the State and the owners for release of a part of the suit land by the State and relinquishment of the claim for compensation by the owners. The suit was filed for enforcement of the aforesaid contract. The agreement dated 19th January, 1985 made between the Governor of Assam and the Gauhati Municipal Corporation represented by the Commissioner on one part and the owners on the other part shows that even after acquisition it was agreed between the parties that the Governor of Assam and the Gauhati Municipal Corporation will accept the gift of 4 K 4 L of land described in Schedule A and the second party will not insist for any price or compensation for acquisition and the first party will withdraw the notification of acquisition issued on 7.2.80 with delivery of 3 K 8 L of land described in the Schedule B to the second party. Referring in brief to the merit of the case. Mr. Bhattacharjee, learned senior counsel submitted that the conduct of the government in withholding the compensation money and thereafter dishonoring the agreement made by them cannot be considered to be a case which will cause hardship for which the petition for condonation is to be treated leniently.

5. According to Mr. Bhattacharjee, there is no proper explanation for the delay of 22 days in filing this revision petition and, hence, the delay cannot be condoned. It has been further argued that under the given situation the State cannot be given any preferential treatment in the matter of condonation of delay specifically when there is no jurisdictional error in the impugned order dated 12.5.2000. According to Mr. Bhattacharjee, condonation of delay in the instant case even if granted would be futile since the order passed by the learned Civil Judge on the face of grave negligence and laches on the part of the Defendant Petitioners does not suffer from any illegality or impropriety.

6. Mr. Rahman, learned State counsel, however, tried to justify the delay referring to the averments in para 6 to 9 of the application u/s 5 of the Limitation Act.

7. I have carefully examined the application. It appears that the impugned order was passed on 12.5.2000. It was only on 1.6.2000 i.e. after 18 days that the learned Govt. Advocate referred the matter to the government for a decision to move the High Court. Although the said letter was written on 1.6.2000, the Deputy Secretary to the Govt. forwarded the connected documents to the senior Govt. Advocate only on 7th July, 2000 for preferring the revision petition. The application does not contain any reasonable explanation for 18 days delay caused

by the learned Govt. Pleader and 37 days delay caused by the Deputy Secretary in forwarding the documents to the learned senior Govt. Advocate. It is further stated in the application that during the course of preparation of the revision petition it was found that the copy of the plaint was not available and, as such, the matter was further delayed in procuring the, copy. In the process delay of 22 days has taken place. There is obviously no satisfactory explanation for the delay that occurred in the office of the learned Govt. Advocate and the Deputy Secretary to the Govt.

8. It is true that court should show leniency in the matter of condonation of delay when it concerns the State because of inherent apathy of the bureaucratic process, but that does not mean that the delay, even if of a few days, without any reasonable explanation will have to be condoned. A Division Bench of this Court in *Union of India and Others Vs. Wood Crafts Products Ltd. and Another*, observed that the officers of the State and its instrumentalities carry an impression that with each and every case the delay caused in filing an application is bound to be condoned as a matter of course. It would be relevant to reproduce here-in-below the observation of the revision Bench in para 16 of the judgment:

16. The term "sufficient cause" is not defined u/s 2 of the Limitation Act, but by the same, it means and so far has been construed as beyond control of the party seeking indulgence for extension of the period of limitation. But from a bare perusal of Section 5 of the Limitation Act and its preamble, it manifests that Limitation Act is an exhaustive Code governing the law of limitation in respect of matters specifically dealt with by it. This is why the law of Limitation is a panacea to prevent disturbance or deprivation of what may have been acquired in equity of justice or what may have been lost by the parties or inaction negligence of laches. The courts are not permitted to travel beyond the provisions of the Act or to supplement them. The court cannot grant exemption from limitation on equitable consideration or on the ground of hardship.

9. Mr. Rahman learned State counsel referred to a decision of the Supreme Court in the case of *Ramesh Chand and another Vs. Punjab National Bank and others*, where the Supreme Court on special consideration permitted the Defendant Appellant to file written statement on deposit of a cost of Rs. two lakhs. Reliance has also been placed by the learned State counsel in the case of *G.P. Srivastava Vs. Shri R.K. Raizada and Others*,

10. I have carefully taken into consideration the fact situation of those cases and in my opinion, the decisions in the above cases cannot be straightway applied in the instant case because of marked factual difference. Similarly, the decision in *United Bank of India v. Naresh Kumar and Ors.* AIR 1997 SC 3 cannot be relied upon since it was a case by the Bank for recovery of loan whereas the case at hand is for vindicating one's own right over their ancestral land and that too for enforcement of a contract. Condonation must be on proper explanation of delay to advance the cause of justice. In the instant case, the evidence of the Plaintiff has been closed. Although no written statement has been filed the Petitioner

State would be entitled to cross-examine the witnesses that may be tendered by the Plaintiffs. The State may vindicate its cause by taking part in the cross-examination and also by adducing evidence although no written statement has been filed by them. Delay of nine years in taking appropriate steps and in filing written statement despite presence of the learned Govt. Pleader is an example of grave negligence by the State authority which cannot but be taken seriously for want of sufficient explanation.

11. In my opinion, the delay in die instant case that occurred with different functionaries has not been properly explained and the merit of the case is also not such that calls for departure from the rigorous of the provisions of the Limitation Act.

12. In the result, this petition u/s 5 of the Limitation Act is dismissed. Consequently the Civil Revision petition stands dismissed. It is, however, observed that the witnesses already examined and other witnesses that may be examined, shall be allowed to be cross-examined by the learned State counsel and in this process the State may very well vindicate their plea that the suit is barred by limitation and that the contract is not executable because of enforcement made by the third party.