
(2003) 09 GAU CK 0048
In the Gauhati High Court
Case No : C.M.A. No. 28 of 2003

The State of Tripura and Others

APPELLANT

Vs

Bhowmik and Co.

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Limitation Act, 1963 — Section 5

Citation : AIR 2004 Guw 50 : (2004) 2 GLR 252 : (2005) GLT 58 Supp

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : S. Deb and R.B. Sinha, for the Appellant; A.M. Lodh A. Lodh and M. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—This is an application u/s 5 of the Limitation Act, 1963 for condoning the delay of 200 days in preferring the connected first appeal u/s 96 of C.P.C. which is directed against the Judgment dated 14-3-2002 passed by the learned Civil Judge (Senior Division), Dharmanagar, North Tripura in Money Suit No. 7/1999.

2. Heard Mr. S. Deb, learned senior counsel, assisted by Mr. R.B. Sinha, learned counsel for the petitioners and Mr. A.M. Lodh, learned senior counsel, assisted by Mr. A. Lodh, learned counsel for the respondent.

3. The case of the petitioners is that the impugned Judgment was delivered on 14-3-2002 and the decree was drawn on 26-3-2002. The petitioners applied for certified copy of the Judgment and decree on 21-3-2002 and the same was made ready on 18-4-2002. The said documents were obtained by them on 4-5-2002. Thereafter on 21-5-2002 the petitioner No. 4 requested the Additional Government Pleader, who conducted the case before the trial Court, to give his opinion in the matter and also to intimate the time limit for filing the appeal. The Addl. G.P. after going through the file gave his opinion on 3-6-2002 by advising

that the file might be examined by the Law Department. On receipt of the said opinion, the file was referred to the petitioner No. 3 by transmitting from Dharmanagar to Kumarghat on 3-6-2002. The petitioner No. 3 after receiving the file, endorsed the same to the petitioner No. 2 on 7-6-2002, which was transmitted on the same day. The petitioner No. 2 received the file on 12-6-2002 and on 16-7-2002 he sent the matter to the Law Department for opinion requesting to advise the administrative department as to whether the payment of the decretal amount would be made to the claimant or otherwise. The Law Department, who received the file on 19-7-2002, returned the file to the petitioner No. 2 on 26-7-2002 by observing that there were good grounds for appeal against the impugned Judgment as early as possible and since the time of filing appeal had already been expired by making an application for condonation of delay. The file was received by the petitioner No. 3 on 29-7-2002 and was again sent to the Addl. G.P. on the same day. Though the file was received by the Addl.G.P. on 29-7-2002, the same was returned by him only on 13-12-2002. In returning the file on 13-12-2002, the Addl. G.P. advised that the matter be placed before the Government Advocate for filing of appeal immediately. On receipt of the file, the petitioner No. 3 sent the file to the Govt. Advocate, namely, Sri N. C. Paul. Sri N. C. Paul then endorsed the file to the Ld. Government Advocate, Tripura for action on 6-1-2003. The learned Government Advocate, however, sent the file to the Legal Remembrancer, Tripura advising that Shri R. B. Sinha, Advocate may be engaged for preferring an appeal to avoid further delay in filing the appeal. On 8-1-2003 the Legal Remembrancer issued the appointment letter of Mr. R. B. Sinha, Advocate. On receipt of the file by the said Mr. R. B. Sinha on 9-1-2003, he requisitioned some documents viz. notice u/s 80, CPC, plaint, written statement as well as copies of evidence of the trial Court, for which some officials of P.W.D. had to be sent to Dharmanagar on two occasions to obtain certified copies of the said documents from the trial Court. After receiving all the aforesaid documents, the said Mr. R. B. Sinha on 21-1-2003, the memo of appeal etc. were prepared by him and the appeal filed on 27-1-2003. The petitioners submit that under those circumstances the delay has occurred and the grounds of delay being bona fide, the same may be condoned.

4. The respondent contested the application by filing written objection. In the written objection it was vehemently urged that the petitioners failed to explain the delay of 17 days in obtaining the certified copy and asserted that the other reasons such as transmitting the file from one petitioner to another are all false and not based on records. The respondent also denied the file was ever handed over to the Addl. G.P. and others or that the same was lying with him from 29-7-2002 to 13-12-2002. The respondent also questioned the bona fide of the petitioners in handing over the file to the Addl. G.P. when necessary instruction was given by the L.R. to prefer appeal. The respondent, therefore, prays that the application for condonation of delay may be rejected.

5. On examination of the application as well as the amended application for

condonation of delay it becomes obvious that the petitioners failed to obtain the certified copy of the impugned Judgment and decree till 4-5-2002, when the same was ready as early as on 18-4-2002. However, this unexplained delay occurred before the expiry of the period of limitation, which is 90 days from the date of the Judgment. Therefore, the objection of the respondent in this regard is untenable. In so far as the sequence of event starting from 4-5-2002 to 29-7-2002, the petitioners cannot be faulted with for any inaction or mala fide. After all, these delays can be attributed to the impersonal nature of the functioning of bureaucracy. However, it is not understood as to how the file was handed over to the Addl. G.P. at Dharmanagar when the appeal was to be filed in the High Court. It is not the case of the petitioners that they were ignorant of the appropriate forum for filing appeal in this case.

I have also gone through the written explanation dated 24-4-2003 of the concerned Addl. G.P. In his explanation, the Addl. G.P. in the first part of Para 2 said something about receipt of the comments/decision from the Law Department for preferring appeal in this case, but later in the same paragraph, he stated that the Department had inadvertently or otherwise handed over the case file to the office of the Govt. Pleader, Dharmanagar. This cannot be said to be consistent. He cannot say that he received the comments from the Law Department and at the same time claim that the Department inadvertently handed over the file to the Office of the Govt. Pleader. The petitioners in their amendment application stated that the staff of the petitioner No. 3 met the Addl. G.P., Dharmanagar in his residence on diverse dates to get back the case records from him, but the file was not returned until 13-12-2002. For about six months, the staff of the petitioner No. 3 were alleged to have met the Addl. G.P. on diverse dates yet they were not in a position not only to collect the said file but also were unable to find out whether the said file was misplaced as claimed by the concerned Addl. G.P. in his explanation. In view of the above inconsistencies and discrepancies in the pleadings of the petitioners, I cannot but conclude that no satisfactory or credible explanation has been given by the petitioners for condoning the delay.

6. In M.K. Prasad Vs. P. Arumogam, the Hon'ble Apex Court quoted with approval the observation of the same Court in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., which may be reproduced hereinbelow :--

***** "7. In construing Section 5 it is relevant to bear in mind to important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion

is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 1890 13 Mad 269 :

Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which Judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

7. It is vehemently urged by the learned counsel for the petitioners that in this case the petitioners have given day to day explanation of the delay of 200 days and the petitioners had done everything in their power to prosecute the case and also that the concerned Addl.G.P. had also given full explanation of his inability to return the file in time. It is true that an attempt was being made to give day to day explanation of the said delay but the question is whether the explanation offered by the petitioners are credible or probable or satisfactory so as to constitute "sufficient cause". It is difficult to understand as to how the file was sent not to the learned Government Advocate, practising in the High Court, but to a Government Pleader, practising in Dharmanagar when it is not the case of the petitioners that they were ignorant about the forum for filing first appeal against the Judgment passed by the learned Civil Judge (Senior Division).

8. On careful examination of the explanation of the concerned Addl.G.P. and also the application of the petitioners, I am of the opinion that the explanation of delay between 29-7-2002 and 13-12-2002 are sketchy and not truthful. One cannot be oblivious of the fact that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat that decree as binding between the parties. This is what it should be in the absence of sufficient cause shown by the petitioners for the inordinate delay in filing the appeal. In the view that I take. I do not find any reason for condoning the delay as prayed for by the petitioners.

9. For the reasons given above, the application for condonation of delay is hereby dismissed. No costs.