

**(2012) 01 GAU CK 0017**

**In the Gauhati High Court**

**Case No : MC (WA) No.70 of 2010 in WA No.05 of 2012**

W.Rabi Singh

APPELLANT

Vs

State of Manipur & Ors.

RESPONDENT

**Date of Decision : 30-01-2012**

**Acts Referred:**

Limitation Act, 1963 — Section 5, 5

**Citation : (2012) 1 GLT 435**

**Hon'ble Judges : U.B.Saha, J and S.C.Das, J**

**Bench : Division Bench**

**Advocate :** Mr. A. Mohendro, Mr. Ajoy Pebam, Mr. Seityajit & Mr. Lupenjit,  
Advocate appeared for the Respondent Mr. H. Devendra, Advocates appearing for Parties

## Judgement

U.B. Saha, J.—The instant application is filed by the applicantappellant under Section 5 of the Limitation Act, read with Section 151 of the Civil Procedure Code, for condoning the delay of 831 days in preferring the appeal against the order dated 31.03.2008, passed by the learned Single Judge, in WP(C) No. 118 of 2002, whereby and whereunder the learned Single Judge dismissed the writ petition preferred by the applicantappellant.

2. We have heard Mr. A. Mohendro, learned counsel, appearing for the applicantappellant as well as Mr. H. Devendra, learned counsel appearing for the State respondents.

3. Mr. A. Mohendro, while urging for the relief sought for, would contend that the appeal against the order dated 31.03.2008 could not be preferred due to the fault of the learned counsel engaged by the applicantappellant in the writ petition. He further submits that the reasons for causing delay in preferring the appeal have been properly explained in paragraph 3 to 11 of the instant application. He further submits that by this time it is a settled position of law that an application for condonation of delay has to be considered liberally with a pragmatic approach and a litigant should not be penalized for the error/mistake

committed by his counsel.

4. Mr. H. Devendro, learned State counsel, while resisting the prayer for condonation of delay, would contend that there is no doubt that delay of 831 days as prayed for or more than that can also be condoned by a Court subject to the same is properly and satisfactorily explained, in the instant case, the applicant/appellant tried to relieve himself from his duties and obligations, shifting the responsibility of delay on the shoulder of his engaged learned counsel in the writ petition he contended. He further submits that in the instant application there is no specific averment on which date the petitioner met with his learned counsel and what was his advice, more so, relating to the advice of the learned counsel, he did not annex any document with the application except one no objection letter. Thus, it would not be proper for the Court to condone the unexplained delay of 831 days as prayed for.

5. We have given our anxious thought to the submission of the learned counsel of the parties. We have also perused the contention made in paragraphs 3 to 11 of the instant application. On perusal of the contention as stated in the application, it appears that there are only some vague and omnibus allegations against the learned counsel engaged by the petitioner in his writ petition. From the application, it also appears that the applicant/appellant engaged more than one lawyer in the writ petition filed by him, and admittedly, he did not divulge the name of the lawyer, for whose fault he could not file the writ appeal in time. It further appears from Annexure C/1 i.e. a no objection letter, issued by one learned counsel, namely, L. Jayanta Roy, wherein he stated that he had no objection to conduct the writ petition, being WP(C) No. 118/02, and any writ appeal with reference to the said writ petition by any other Advocate other than him, meaning thereby, the learned counsel had consented only to the engagement of any other counsel in the writ petition and with reference to the same in an appeal. Therefore, according to us, it cannot be safely said that the delay caused in preferring the appeal was due to the negligence of the learned counsel. There is no doubt that a litigant should not be penalized either for the fault or for the wrong advice of his engaged lawyer but in the instant case though the applicant/appellant was informed again and again by his counsel regarding nonfiling of the appeal in time, then also he had pursued such lawyer and persistently gone on misunderstanding regarding the period of limitation. 6. By this time, it is the settled position of law that every wrong advice/negligence of the counsel will not ipso facto amount to sufficient cause entitling a party to claim indulgence under Section 5 of the Limitation Act, more so, when the alleged negligence is culpable in nature, then the same cannot be treated a sufficient cause for delay. We have no hesitation to say that by engaging a counsel, a party to the case is not fully relieved from his duties and obligations in the matter. Where a party, either does not get proper response from his counsel or the counsel is willfully misleading him, then it is the party, who is in default and negligent and shall have to bear the consequence and where the litigant himself, prima facie in default, the negligence of the counsel also cannot come to

aid in a claim or application to establish sufficient cause for condonation of delay. We are of the further opinion that when the earlier engaged counsel of the applicantappellant failed to prefer the appeal for a period of three months even after his persuasion then he ought to have engaged another counsel at that time itself. It further appears from the record that he waited for more than two years for preferring the appeal. He should not have depended upon on the assurance of his previous counsel. More so, admittedly, the applicantappellant did not divulge the name of his lawyer for whose fault/mistake he could not file the appeal in time. Thus, the learned State counsel rightly contended that the applicantappellant is not a rustic villager, rather a Govt. employee, who is very much presumed to be aware about the practice and procedures of the Court and it would not be proper to grant the relief sought for.

7. There is no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel, there is no reason why the opposite side should be exposed to a time barred appeal.

8. From reading the application of the applicantappellant, it appears to us that the plea of negligence of the engaged counsel is taken only to cover up his own laches with an attempt to save the limitation.

9. Considering the entire facts and circumstances, we are of the opinion that the reasons for causing delay in preferring the appeal, as explained in the instant application, are neither reasonable nor satisfactory. Thus, the instant application for condonation of delay in preferring the connected appeal is hereby dismissed.