

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

AIZAWL BENCH: AIZAWL

C.M. Appl. No. 35 of 2013 IN RFA No. 7 of 2013

1. Union of India through the Secretary,
Ministry of Shipping & Surface Transport,
Govt. of India, New Delhi.
2. The Chief Engineer,
Project Pushpak (BRTF), Zemabawk,
Aizawl, Mizoram.

..... Petitioners

-Versus-

1. Shri K. Rozara
S/o Vanhnuaithangi (L)
R/o Kawnveng-II, Zemabawk,
Aizawl, Mizoram.

..... Respondent/Plaintiff

2. The Commissioner and Secretary
to the Govt. of Mizoram, Land Revenue
and Settlement Department, Govt. of
Mizoram.
3. The District Collector,
Aizawl District, Aizawl.
4. The Director, Land Revenue and
Settlement Department, Govt. of
Mizoram, Aizawl.

..... Respondents

B E F O R E
THE HON'BLE MR.JUSTICE N. CHAUDHURY

For the petitioner :- Mr. Vanlalnghaka, CGC

For the respondents :- Mr. C. Lalramzauva, Sr. Advocate,
Mr. A.R. Malhotra, Advocate,
Mr. K. Laldinliana, Advocate,
Ms. Lalramsangzuali, Advocate,
Mr. Zoramchhana, Advocate, for resp. No. 1

Date of hearing :- **14-08-2013**

Date of Judgment &
Order :- **14-08-2013**

JUDGMENT AND ORDER (ORAL)

Heard Mr. Vanlalnghaka, learned Central
Government Counsel for the petitioners.

2. By this application, the petitioners have prayed for condonation of delay of 212 days in preferring the appeal. By filing an affidavit-in-opposition, the respondent No. 1 (plaintiff) has brought on record that earlier the same appellants had preferred another appeal being RFA No. 42 of 2012. Even at that time, there was delay in preferring the appeal and as such, the memorandum of appeal in RFA No. 42 of 2012 was accompanied by an application for condonation of delay. The said application was registered as C.M. Appln. No. 108 of 2012. It is further stated at paragraph 6 of affidavit-in-opposition that this Court heard the aforesaid C.M. Appln. No. 108 of 2012 and thereafter passed the order dated 21.11.2012 rejecting the

prayer for condonation of delay. Consequently, the connected First Appeal being RFA No. 42 of 2012 was also dismissed.

3. Mr. A.R. Malhotra, learned counsel for the said respondents further submits that with the said consequential order dismissing the condonation petition in C.M. Appl. No. 108 of 2012 the judgment and decree passed by the learned trial Court in Civil Suit No. 61 of 2009, merged with the order dated 21.11.2012 passed by this Court and as such, technically the said judgment and decree of the learned trial Court cannot be appealed against by a fresh appeal. In support of his contention, the learned counsel for the respondents has placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***Shyam Sundar Sarma –Vs- Pannalal Jaiswal and Others*** reported in **(2005) 1 SCC 436**. In the aforesaid reported case, an application for condonation of delay accompanying the memorandum of appeal was dismissed by the learned First Appellate Court. The Hon'ble Apex Court held that once the First Appellate Court dismissed an application for condonation of delay, consequently dismissing the appeal, a second appeal lies from the consequential order dismissing the appeal.

4. Heard learned counsel for the parties.

5. Perused the application and the affidavit-in-opposition and also I have gone through the judgment relied on by the learned counsel for the respondents.

6. Since there was an appeal before this Court earlier accompanied by an application for condonation of delay and the said application for condonation of delay was rejected, there is no scope for further preferring of appeal and that too, by filing fresh applications for condonation of delay on fresh grounds. It is not disputed at the bar that consequent to rejection of earlier condonation application in C.M. Appl. No. 108 of 2012, the main RFA No. 42 of 2012 was also dismissed. In view of that matter, no further appeal before this Court lies and hence the application for condonation cannot arise. Consequently, this application for condonation of delay is rejected as not maintainable.

JUDGE

Sushil