

JUDGMENT AND ORDER (ORAL)

Heard Mr. Zochhuana, learned counsel for the petitioner and Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram representing the respondent.

2. By this application, under section 5 of the Limitation Act read with Order XLI Rule 3A of the Code of Civil Procedure, the petitioner has prayed for condonation of delay of 298 days in preferring the appeal. In the said application, it has been stated that the judgment and order was passed by the learned Senior Civil Judge, Kolasib on 16.03.2012 when neither the appellant nor the petitioner was present in the Court. According to the petitioner, he got a copy of the said judgment and order only in the last week of May, 2012 as the same was left in their office letter box and that too, in his absence. According to the petitioner, he was out of station and he was at Guwahati at that time in connection with an arbitration case and thereafter, he had to leave for Delhi on 24.07.2012 for another arbitration case. He came back to Aizawl on 5.08.2012 and again left on 19.08.2012 for Delhi and came back at Aizawl on 26.08.2012. During his stay at Aizawl on 26.08.2012 to 6.09.2012, before he left for Kolkata and Delhi, he could manage to engage a lawyer for

the purpose of preparation of the appeal and application for condonation of delay but in view of his continual journey from Aizawl to Delhi and Kolkata under compelling circumstances, the appeal could not be preferred in time and the learned counsel also had to take some time in view of the voluminous records of the case. According to the petitioner, because of this compelling circumstances, a delay 298 days has been caused in preferring the appeal. He states that he is not guilty of lapse or negligence and that he was prevented by sufficient cause in presenting the appeal in time.

3. The State respondent has submitted affidavit-in-opposition against the said application for condonation of delay and has denied the statements made by the petitioner on affidavit. Although a wholesale denial has been made by the State respondent, it is difficult to understand as to how the statements of the affidavit-in-opposition submitted on behalf of the State respondent may be personally aware as to the circumstances, under which the petitioner was compelled to undertake journeys repeatedly from Aizawl to Guwahati, Kolkata and New Delhi and so on. The denial of the case alleged in condonation of delay, therefore, appears to be more formal than real.

4. The learned counsel for the petitioner, Mr. Zochhuana has placed reliance of the judgment of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag and another –Vs- Mst. Katiji and others** reported in **AIR 1987 SCC 1353**. The learned counsel, drew my attention to the paragraph of the said judgment and the same is quoted below :-

“3. The legislature has conferred the power to condone delay by enacting Section 5¹ of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of O. XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

5. I have gone through the records, particularly, the paragraph preferred to above and also perused the averments made in the condonation petition as well as the affidavit-in-opposition submitted by the respondents. After hearing the parties at length and on perusal of the materials on record, I feel that the petitioner has succeeded to make out a case for

condonation of delay. The petitioner was prevented by sufficient cause for not presenting the appeal in time and as such, this application praying for condonation of delay is allowed.

6. This Misc. application is disposed of.
7. Let the appeal be taken up for disposal on merit.

JUDGE

Sushil