

**IN THE COURT OF SENIOR CIVIL JUDGE- 1  
AIZAWL DISTRICT: AIZAWL, MIZORAM**

MISC. J. NO. 02 OF 2009  
[IN RE A NO. 01 OF 2009]

Petitioner/Appellant:

Mr. R. Vanlalvuana  
S/o Vunga (L)  
Model Veng, Lengpui

*By Advocates*

: 1. Mr. J. Lalremruata Hmar  
2. Smt. C. Lalremruati

*Versus*

Respondent's:

Mr. Thanmawia  
Model Veng, Lengpui

*By Advocate's*

: Mr. A. Rinliana Malhotra

Date of Order

: 23-04-2012

**BEFORE**

Dr. H.T.C. LALRINCHHANA, MJS  
Senior Civil Judge-1  
Aizawl District: Aizawl

**ORDER**

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As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1<sup>st</sup> Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5<sup>th</sup> Dec., 2011, case record being pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the nascent insulation of judiciary from the executives in Mizoram towards meeting globalization era in the very competitive globe where malfunctioning of the government is a sine quo non to vanish.

In the instant application, condonation of delay for preferring an appeal after lapse of 40 days is sought due to change of Advocates by the appellant only because of General Election.

Very clear, an appeal against the decision of Subordinate District Council Courts/Addl. Subordinate District Council Courts lie to the then District Council Court within 60 days of the date of orders, excluding the time required for obtaining a copy of the order appealed against under Rule 30 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. The impugned judgment & order was delivered on 30/9/2008 and filed the instant case on 12/1/2009.

However, learned legal aid counsel Mr. A. Rinlian Malhotra regularly appeared the court. The appellant/petitioner not only fails to appear but also fails to file duplicate copy of petition to serve to the opposite party till date without knowing reasons. The law on absence of parties is well settled in **Parimal vs Veena @ Bharti** decided on 8 February, 2011 in connection with Civil Appeal No. 1467 of 2011 (Arising out of S.L.P.(C) NO. 19632 of 2007), the Supreme Court has observed that-

“12. In order to determine the application under Order IX, Rule 13 CPC, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application.”

Whilst the instant case is a long pending case resumed the trial since 15/12/2011, I do not find sufficient cause to exonerate the inaction of the appellant/petitioner.

However, even on merit of the case, no choice except to examine the case under section 5 of the Limitation Act is the well settled law as held in the case of **Union Of India (Uoi) And Ors. vs V.L. Rawna And Ors.** decided on 12 January, 2007 reported in 2007 (1) GLT 742, the Gauhati High Court has held that -

“8. This issue may be closed at this stage by saying that though Rule 18 of the Administration of Justice Rules does not say anything about condonation of delay, Section 5 of the Limitation Act can be availed of for condonation of delay. No doubt there was no prayer for condonation of delay on the part of the appellants herein, but once the Court permitted the appellants to withdraw the appeal with liberty to file afresh within the period specified, the same amounts to condonation of the delay. This issue need not detain me any further.”

Although there may be sufficient cause for condonation of delay, it cannot be claimed as a matter of right as correctly enunciated in **Ramlal**

**and others v. Rewa Coalfields Ltd.** reported in AIR 1962 SC 361, the Supreme Court held as under:

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay.”

More so, condonation of delay is a mixed question of law and fact as held in **Balasaria Construction (P) Ltd. v. Hanuman Seva Trust & Ors.** (2006) 5 SCC 658, without the active participation of the petitioner, case cannot be disposed on merit and in favour of the petitioner. Furthermore, the cause of delay submitted in the petition is merely general election, what general election is not mentioned in the petition. Be that as it may, even during election of MLA of any other election, the court business is never disturb. I find that in the pretext of general election, no grounds of condonation of delay can be obtained. The ground mentioned by the petitioner itself is arbitrary and is purely the fault of the petitioner which the court could not lend the right hand for condonation of delay. Law is again settled in **Ajit Singh Thakur Singh and anr. vs. State of Gujarat** (1981) 1 SCC 495, the Apex court observed:

“It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause.”

So is the lacunae of the petition, the jurisdiction of this court is obviously ousted by law of limitation to examine and proceed RFA No. 1 of 2009 as boldly held in **Vareed Jacob vs Sosamma Geevarghese & Ors** decided on 21 April, 2004 in connection with Appeal (civil) 2634 of 2004 and reported in 2004 AIR 3992, 2004 (1) Suppl. SCR 534, 2004 (6) SCC 378, 2004 (5) SCALE 102, 2004 (2) Suppl. JT 165, the Supreme Court has observed that-

“A suit or a proceeding which is barred by limitation would oust the jurisdiction of the court to entertain the same. When a proceeding is barred by limitation, it culminates in a right to the non-suit.”

I therefore have no choice but to reject the instant petition and also to dismiss RFA No. 1 of 2009 by taking reliance in **Kamlesh Babu & Ors. Vs.**

**Lajpat Rai Sharma & Ors.** in connection with Appeal (civil) 2815 of 2008 decided on 16/04/2008 reported in 2008 (6) SCR 653, 2008 (6) SCALE 403, 2008 (4) JT 652, wherein, the Supreme Court has held that-

“17. It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence.”

THUS, as inevitably, the petition is rejected and also further dismissed RFA No. 1 of 2009 due to barred by law of limitation, no order as to costs.

Give this copy to all concerned.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 23<sup>rd</sup> April, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge- 1

Aizawl District: Aizawl

Memo No. Misc J./1/2009, Sr. CJ (A)/      Dated Aizawl, the 23<sup>rd</sup> April, 2012

Copy to:

1. Mr. R. Vanlalvuana S/o Vunga (L), Model Veng, Lengpui through Mr. J. Lalremruata Hmar, Adv.
2. Mr. Thanmawia, Model Veng, Lengpui through Mr. A. Rinliana Malhotra, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR