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

RFA NO. 25 OF 2009

Appellant:

Smt. C. Lalmalsawmi
D/o C. Sailala (L)
Bawngkawn, Aizawl

By Advocates : 1. Mr. W. Sam Joseph
2.Mr. Zochhuana
3. Mr. Hranghmingthanga Ralte
4. Mr. F. Lalengliana
5. Mr. Francis Vanlalzuala
6. Mr. C. Lalfakzuala

Versus

Respondent's:

Mr. Sangthanga
S/o Mankhuma (L)
Bawngkawn Bazar Veng, Aizawl

By Advocates : 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra
3. Mr. T.J. Lalnuntluanga
4. Mr. Joseph Lalfakawma
5. Miss Penlui Vanlalchawii
6. Mr. K. Laldinliana

Date of hearing : 10-04-2012
Date of Judgment & Order : 11-04-2012

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

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st 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 5th 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.

BRIEF STORY

This appeal is directed against the judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 06.08.2009 in Civil Appeal No. 06 of 2005. Wherein, the learned Magistrate declared the respondent as the rightful owner of the suit land and building under his occupation under LSC No. Azl. 18 of 1983.

The appellant had assailed that the LSC No. Azl. 18 of 1983 was in the name of the appellant as the rightful owner. By a natural love and affection, the appellant allowed her sister namely Mrs. Lalrinpuii to stay in the said land. Meanwhile, the said Mrs. Lalrinpuii had borrowed the money worth amounting to Rs. 50,000/- (Rupees fifty thousand) from the respondent. Due failure to make payment of the said debt by Mrs. Lalrinpuii, claimed of the land of the appellant by the respondent is no basis and no locus standi. The judgment & order passed by the Village Court, Bawngkawn Dt. 18/10/2005 is therefore prayed to uphold which directed the respondent to vacate the suit land.

On the other hand, the respondent in his written objection stated that the findings of the learned lower appellate court that the claim of the appellant is barred by Article 65 of the Limitation Act, 1963 does not seem to be the case of deciding beyond the scope of pleading. He further submitted that the stand taken by the respondent that he has been in physical possession and occupation of the suit land from the month of June, 1992 till the date of filing the suit before the original village court, Bawngkawn being more than 12 years, and the respondent having been in adverse possession of the suit land ever since June, 1992 till date, the learned lower appellate court had rightly decided the appeal in favour of the respondent in the impugned judgment & order. Thus, prayed to dismiss of the instant appeal.

ARGUMENTS

Learned counsels of both parties after reiterated and remain relied in their respective memorandum of appeal and written objections at the time of hearing of the case were in agreed in the following facts-

1. The agreement in between the respondent and Mrs. Lalrinpuii for a bond for payment of debt amount to the respondent is not legally valid.

2. The respondent physically occupied the suit land under LSC No. Azl. 18 of 1983 since 1991 by paying a monthly rent of Rs. 400/- and that

Smt. Lalrinpuii (L) had taken a sum of Rs. 50,000/- from the respondent.

Mr. C. Lalramzauva, learned senior counsel for the respondent further relied under Article 65 of the Limitation Act, 1963 and on the basis of the doctrine of adverse possession in favour of the respondent as the original case before learned village court, Bawngkawn was filed after 13 years when the respondent occupied the suit land. Mr. W. Sam Joseph, learned counsel for the appellant vehemently denied that the cause of action had arisen when the respondent had replied the letter issued to him by the appellant on 30th September, 2005. No point of adverse possession is relevant in the instant picture of the case. By virtue of section 14 of the Mizo District (Land and Revenue) Act, 1956, the respondent is not entitle ownership of the suit land. Mr. C. Lalramzauva relied in the decision of Hon'ble Apex Court reported in (2008) 12 SCC 577 which is about rejection of plaint under O. VII, R. 11 (d) of the Code of Civil Procedure, 1908 on the ground of law of limitation.

FINDINGS

On bare perusal of the facet of the impugned judgment & order, only the grounds of adverse possession, the respondent was decreed as the rightful owner of the suit land due to barred for filing the suit by law of limitation. The main law points involved in the instant case are as follows-

(1) Whether the respondent is entitled to declare as the rightful owner of the suit land under the umbrella of adverse possession or not.
(2) When did the cause of action in favour of the appellant had arisen in the instant suit.

The two points may be discussed together, undisputedly, the rigour of Article 65 of the Limitation Act, 1963 is applicable in the instant case viz. For possession of immovable property or any interest therein based on title. For that purpose, limitation begins when the possession of the defendant becomes adverse to the plaintiff. The period of limitation is for 12 years. Admittedly, the instant original case before Village Court, Bawngkawn was filed after lapse of 12 years when the respondent occupied the suit land. Explanation under the said Article reads thus-

> *"(a) Where the suit is by a remainder-man, a reversionary (other than a landlord); or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversionary or devisee, as the case may be falls into possession;*
>
> *(b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female the possession of the defendant shall be deemed to become adverse only when the female dies.*
>
> *(c) Where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession."*

In the instant crux, heavy reliance may be taken in the case of **Amrendra Pratap Singh Vs. Tej Bahadur Prajapati & Ors**. in connection with Appeal (civil) 11483 of 1996 decided on 21/11/2003, the Supreme Court has observed that-

> "What is adverse possession? Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of 12 years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, at the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action **essentially by default or inaction of the owner**.
>
> A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrong doing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong doer and re–enter into possession, has defaulted and remained inactive for a period of 12 years, which the law considers reasonable for attracting the said penalty. Inaction for a period of 12 years is treated by the Doctrine of Adverse Possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.
>
> The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the Doctrine of Adverse Possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable

> of being called a manner of 'dealing' with one's property which results in extinguishing one's title in property and vesting the same in the wrong doer in possession of property and thus amounts to 'transfer of immovable property' in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section."

In ***D. N. Venkatarayappa and Another*** v. ***State of Karnataka and Others*** (1997) 7 SCC 567 the Supreme Court observed as under:-

> "Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession."

In **Md. Mohammad Ali (Dead) By LRs.** v. **Jagadish Kalita & Others** (2004) 1 SCC 271, paras 21-22, the Supreme Court observed as under:

> "21. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.
>
> 22. ....We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the written statement or not which can also be gathered from the cumulative effect of the averments made therein."

In **P. T. Munichikkanna Reddy & Others** v. **Revamma & Others** (2007) 6 SCC 59, it was held that-

> "5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. *It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.* [See Downing v. Bird 100 So. 2d 57 (Fla. 1958), Arkansas Commemorative Commission v. City of Little Rock 227 Ark. 1085 : 303 S.W.2d 569 (1957); Monnot v. Murphy 207 N.Y. 240, 100 N.E. 742 (1913); City of Rock Springs v. Sturm 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).]"

In **Chatti Konati Rao & Ors. vs Palle Venkata Subba Rao** decided on 7 December, 2010 in connection with Civil Appeal No. 6039 of 2003, the Supreme Court has held that-

> "14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that

mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. **Plea of adverse possession is not a pure question of law but a blended one of fact and law**."

Lastly, In the case of **Hemaji Waghaji Jat *Versus* Bhikhabhai Khengarbhai Harijan & Others** reported in 2008 (12) SCALE 697, 2008 (10) JT 562, the Apex Court observed that-

"34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

35. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation.

36. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession."

The ingredients for adverse possession can be sum up that (i) by default or inaction of the owner [**Amrendra Pratap Singh Vs. Tej Bahadur Prajapati & Ors**. supra.] (ii) the possession of the defendant should be adverse to the plaintiff (iii) the defendant must continue to remain in possession for a period of 12 years (iv) Animus possidendi [*animus possidendi* means the intention of possessing] (v) the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession (vi) in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession (vii) The person who claims adverse possession is required to establish (a) the date on which he came in possession; (b) nature of possession (c) the factum of possession; (d) knowledge to the true owner; (e) duration of possession and (f) possession was open and undisturbed.

At the time of arguments, Mr. C. Laramzauva, learned senior counsel for the respondent in their appeal memorandum in the first appellate court embarked that specific plea was made under sub-para (ii) of para 8 of their memorandum of appeal. But on perusal of their memorandum of appeal, no specific plea for adverse possession is found except mere preclude of the appellant due to law of limitation. Facts mentioned in the memorandum of appeal in the first appellate court by the respondent was that they used to stay as tenant in the house of Smt. Lalrinpuii by paying Rs. 400/- per month in the year of 1991. As the said Smt. Lalrinpuii was in need of huge sum of money, the respondent lend Rs. 50,000/- to the said Smt. Lalrinpuii. The said Smt. Lalrinpuii was alleged to pledge that failing to pay the said amount with interest @ 10% per month, half of her land including the portion under the occupation of the respondent would goes to the respondent. But it was not put down in writing and based on the personal diary of the wife of the respondent. Due to the said Smt. Lalrinpuii fails to make repayment in time, the respondent stopped for paying monthly rent since June, 1992. The respondent and Smt. Lalrinpuii were never in disputes. On 24/8/2005, the appellant sent a letter to the respondent claiming that the respondent fails to pay house rent although the respondent paid advance of Rs. 50,000/- through the sister of the appellant Smt. Lalrinpuii. From June 2002 to August, 2005, the accrued rent amount falls @ Rs. 12,800/-. The respondent thereby replied the said letter on 30/9/2005 by claiming the suit land as ownership. On the facet of the LSC No. Azl. 18 of 1983, cogently, it was re-issued in the name of the appellant as per the Govt. approval Dt. 24.5.2001. In that catena, the respondent in his memorandum of appeal in the first appellate court stated that the said LSC was previously owned and put in the name of Mr. Sailala father of late Smt. Lalrinpuii. The memorandum of appeal filed by the respondent in the first appellate court was fortified by witnesses of the respondent including he himself acted as witness. Thus, evidence of the respondent in the

appellant court elicited that the cause of action in favour of the appellant would arose in 2001 when LSC No. Azl. 18 of 1983 was issued in favour of the appellant or on 24/8/2005, the appellant sent a letter to the respondent claiming that the respondent fails to pay house rent although the respondent paid advance of Rs. 50,000/- through the sister of the appellant Smt. Lalrinpuii and replied the said letter by the respondent on 30/9/2005 by claiming the suit land as ownership which the learned first appellate court eschewed. It clearly revealed that law of limitation barred the appellant to file the suit in the Village Court Bawngkawn which was disposed on 18/10/2005 as it is less than twelve years even reckoning from 2001 when the first cause of action had arisen in favour of the appellant. Doctrine of adverse possession is not therefore applicable in the instant cause/case.

In another angle, as held in **Amrendra Pratap Singh Vs. Tej Bahadur Prajapati & Ors**. supra., no inaction or default on the part of the appellant is found as the appellant sent a letter for paying a rent to her to the respondent soon after converted the disputed LSC in her own name. Furthermore, as held in **P. T. Munichikkanna Reddy & Others** v. **Revamma & Others (supra)**, no abandonment of the suit land by the appellant was found as the appellant sent a letter for paying a rent to her to the respondent soon after converted the disputed LSC in her own name. Before conversion of the disputed LSC in the name of the appellant, as submitted by the respondent, it was put in the name of Late Sailala who was the father of the appellant, the respondent further fails to proof in his evidence that his possession of the suit land with effect from 1991 was with the knowledge of the true owner whilst knowledge to the true owner is essential ingredients as held in **Chatti Konati Rao & Ors. vs Palle Venkata Subba Rao (supra.)** whilst the stranger namely late Smt. Lalrinpuii borrowed the sum of the respondent and settled the crux by the respondent with the said Smt. Lalrinpuii (late) alone.

More so, evidence of the appellant in the first appellate court also depicted which is also corroborate by deposition of the respondent as his witness that the respondent used to occupied the suit land as a tenant by paying monthly house rent. Merely in the pretext of debt to late Smt. Lalrinpuii, the respondent claimed ownership of the suit land without any valid agreement is tenable in law. The recent observations of Hon'ble Supreme Court is rather relevant in the instant case as held in **Maria Margadia Sequeria Fernandes and Others vs Erasmo Jack De Sequeria (D) through L.Rs**. decided on 21 March, 2012 in connection with Civil Appeal No. 2968 of 2012 (Arising out of SLP (C) No. 15382 of 2009), the Hon'ble Supreme Court has held that-

> "100. The ratio of this judgment in Sham Lal (supra) is that merely because the plaintiff was employed as a servant or chowkidar to look after the property, it cannot be said that he had entered into such possession of the property as would entitle him to exclude even the master from enjoying or claiming possession of the property or as would entitle him to compel the master from staying away from his own property.

101. Principles of law which emerge in this case are crystallized as under:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

102. In this view of the matter, the impugned judgment of the High Court as also of the Trial Court deserve to be set aside and we accordingly do so. Consequently, this Court directs that the possession of the suit premises be handed over to the appellant, who is admittedly the owner of the suit property."

Admittedly, there may be some procedural lapse in the village court, Bawngkawn for deciding the instant crux on merit, but, the proviso to clause (b) of sub-section (3) of section 1 of the Code of Civil Procedure, 1908 remains unaltered and whilst the well settled law is that procedure is the handmaid of justice Vide, **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244: **Sushil Kumar Sen v. State of Bihar** (1975) 1 SCC 774: **The State of Punjab and Anr. v. Shamlal Murari and Anr**. (1976) 1 SCC 719. In short, the judgment & order of Village Court, Bawngkawn Dt. 18/10/2005 in the instant case being met of justice, equity and good conscience is indispensably to uphold/restore by setting aside of the impugned judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 06.08.2009 in Civil Appeal No. 06 of 2005. In the judgment & order rendered by Village Court, Bawngkawn Dt. 18/10/2005, the appellant was also directed to pay the unpaid debt of her deceased sister namely Smt. Lalrinpuii to the respondent @ Rs. 50,000/- (Rupees fifty thousand) as the appellant fairly embarked such onerous task to her, subject to payment of such amount, the respondent was also directed to vacate the suit land.

However, the findings in the impugned judgment & order saying that the agreement alleged to have been made between the respondent and the late Smt. Lalrinpuii cannot be said to be a valid agreement is confirmed as no basis and legal sanction as merely based on the extract diary record of the wife of the respondent without the signature of the said Smt. Lalrinpuii and lack of authenticity at all. Pertinently, the ratio laid down in **Hemaji Waghaji Jat *Versus* Bhikhabhai Khengarbhai Harijan & Others (supra.)** is appreciated towards justice, equity and good conscience in this materialistic society.

With regard to reliance taken by Mr. C. Lalramzauva, learned senior counsel for the respondent, in **Kamlesh Babu & Ors vs Lajpat Rai Sharma & Ors** decided on 16 April, 2008 in connection with Appeal (civil) 2815 of 2008 and reported in (2008) 12 SCC 577, the position of law was merely reiterated that-

> "21. It is no doubt true, as was pointed out by this Court in the case of Balasaria Construction (P) Ltd. (supra) and also in Narne Rama Murthy's case (supra), that if the plea of limitation is a mixed question of law and fact, the same cannot be raised at the appellate stage. We have no problem with the said proposition of law. What we are concerned with is whether the said proposition is applicable to the facts of this case. In this case the plea of limitation had been raised in the written statement and though no specific issue was framed in respect thereof, a decision was given thereupon by the learned Trial Court. Apart from Section 3(1) of the Limitation Act, even Order 7 Rule 11(d) of the Code of Civil Procedure casts a mandate upon the court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation."

The other law set forth in that holy judgment was 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.
>
> 18. In the instant case, such a defence has been set up in the written statement though no issue was framed in that regard. However, when the Trial Court had in terms of the mandate of Section 3(1) come to a finding that the suit was barred by limitation, it was the duty of the First Appellate Court and also of the High Court to go into the said question and to decide the same before reversing the judgment of the Trial Court on the various issues framed in the suit. Even though the various issues were decided in favour of the plaintiff both by the First Appellate Court and the High Court, the same were of no

> avail since the suit continued to remain barred under Article 59 of the Limitation Act, 1963.
>
> 19. Ms. Srivastava's submission that the plea of limitation not having been taken before the appellate forums, the same could not be taken before this Court in proceedings under Article 136 of the Constitution on the ground that the question of limitation was a mixed question of law and fact, stands nullified by the fact that the suit continued to remain barred by limitation after the decisions of the appellate Courts since such finding of the Trial Court had not been set aside either in the first appeal or by the High Court in second appeal."

In that arena, in the Village Court, Bawngkawn, it was found that no pleadings on law of limitation was found. However, although beyond memorandum of appeal, it cannot be oblivious on the well settled law on Limitation Act, a liberal approach is required to adopt for dealing with condonation of delay as held in **Office Of The Chief Post Master General & Ors. vs Living Media India Ltd. & Anr** decided on 24 February, 2012 in connection with Civil Appeal No. 2474-2475 of 2012 (Arising out of SLP (C) Nos. 7595-96 of 2011, the Supreme Court has held that-

> "12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government."

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."

In **N. Balakrishnan v. M.Krishnamurthy** [1998 (7) SCC 123] the Supreme Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing malafide or deliberate delay as a dilatory tactics, the court should normally condone the delay. However, in such a case the court should also keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. And in the case of the **State of West Bengal v. The Administrator, Howrah Municipality and others** (1972) 1 Supreme Court Cases 366, while considering scope of the expression 'sufficient cause' within the meaning of Section 5 of the Act, the Supreme Court laid down that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

In **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation** in connection with Civil Appeal No. 2075 of 2010 (Arising out of S.L.P. (C) No.10965 of 2009) decided on 26-02-2010, the Supreme Court has held that-

> "The expression sufficient cause employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate − Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107, N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 and 10 Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106."

And in the case of **Improvement Trust, Ludhiana vs Ujagar Singh & Ors** decided on 9 June, 2010 in connection with Civil Appeal Nos. 2395 of 2008, the Supreme Court has held that-

> "After all, justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at the threshold.

Neither in the first appellate court nor in the Village Court, Bawngkawn, the provisions of O. VII, R. 11 of the CPC was invoke, I therefore do not find the relevancy of reliance taken by learned senior counsel for the respondent at this stage.

ORDER

Due to the aforesaid reasons, the impugned judgment & order passed by the learned Magistrate, Subordinate District Council Court, Aizawl dt. 06.08.2009 in Civil Appeal No. 06 of 2005 is hereby set aside and quashed by restoring the judgment & order passed by the Village Court, Bawngkawn Dt. 18/10/2005 in connection with the instant case. No order as to cost.

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 11th 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. RFA/25/2009, Sr. CJ (A)/ Dated Aizawl, the 11th April, 2012

Copy to:

1. Smt. C. Lalmalsawmi D/o C. Sailala (L), Bawngkawn, Aizawl through Mr. W. Sam Joseph, Adv.
2. Mr. Sangthanga S/o Mankhuma (L), Bawngkawn Bazar Veng, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR