

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

MISC. J. NO. 03 OF 2010
[IN REFA NO. 05 OF 2010]

Petitioner/ Appellant:

Mr. P.C. Lalhmangaihthanga
S/o P.C. Rohmingthanga
Chaltlang Venglai, Aizawl

By Advocates : 1. Mr. C. Lalrinchhunga
2. Mr. H. Lalmuankima

Versus

Respondent's:

Smt. Lalrampani
D/o Zarmawia
Kawnpui Vengthar, Kolasi b District

By Advocate's : _____

Date of Order : 03-05-2012

BEFORE

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

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

In the instant application, condonation of delay for preferring an appeal after lapse of 45 days is sought due to inconvenience of the petitioner/appellant as his service impelled failure to prefer the appeal in time.

FINDINGS AND REASONS

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 in Divorce Certificate No. 61 of 2009 was delivered on 3/9/2009 and filed the instant case on 12/2/2010.

Till date, the respondent fails to cooperate the proceedings without knowing reasons. It impels to adjudicate the case on merit in the absence of the respondent. It is a well settled law that 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-

“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.”

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.

ORDER

Thus, due to reasons mentioned above, application for condonation of delay is granted towards substantial justice and to dispose of the case on merit. No order as to costs.

However, since the case record of RFA No. 5 of 2010 is misplaced before transmission to this court and failed to trace out of the same, the appellant/petitioner is allowed to file application for re-construction of the said case record within twenty days from the date of this order.

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 3rd May, 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./3/2010, Sr. CJ (A)/ Dated Aizawl, the 3rd May, 2012

Copy to:

1. Mr. P.C. Lalhmangaihthanga S/o P.C. Rohmingthanga, Chaltlang Venglai, Aizawl through Mr. C. Lalrinchhunga, Adv.
2. Smt. Lalrampani D/o Zarmawia, Kawnpui Vengthar, Kolasib District
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR