

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT : AIZAWL**

P R E S E N T

Mrs. Helen Dawngliani
Addl.District & Sessions Judge

CMA No.57/2014

In RFA No.9/2014

H.Lalbiaktluanga
H/o Nuzawni(L)
R/o East Lungdar
Mizoram

.....

Applicant/appellant

Versus

Thangmuri
M/o Nuzawni(L)
R/o Durtlang Mel 5, Aizawl
Mizoram

.....

Respondent/O.P

Date of Hearing 21.5.2014

Date of Order 27.5.2014

A P P E A R A N C E

For the Appellant

..... Mr. R. Laltanpuia, Advocate

For the Respondent

..... Mr. Lalbiaknunga Hnamte, Advocate

O R D E R

1. This application u/s 5 of the Limitation Act have been filed to condone the delay of 392 days in preferring an appeal against the Orders dt.4.12.12 passed by the Ld. Civil Judge-III in Heirship Certificate Case No.1758/2012

2. Heard the Ld. Counsels.

3. Mr. R. Laltanpuia, the Ld. Counsel for the applicant submitted that the applicant and Nuzawni were husband and wife. The said Nuzawni owned a plot of land under LSC No. AZL. 24 of 1992 and she died on 30.7.2006. On her death, Heirship Certificate No.520 of 2012 was issued to the applicant by the Ld. Civil Judge vide Order dt.5/7/2012 in respect of the said plot of land. Thereafter, on the application of the respondent, Heirship Certificate No. 1758/2012 in respect of the said plot of land under LSC No. AZL.24 of 1992 was issued to the respondent without the knowledge of the applicant. Subsequently, on 26.6.2013 Malsawmtluangi who is a relative of Nuzawni approached the Court of Civil Judge at Aizawl and reported about the existence of double heirship Certificate in respect

of the same plot of land. The said court temporarily cancelled both the heirship certificates. For the first time, the applicant came to know about the existence of two heirship certificates. When the parties appeared before the Ld. Civil Judge on 12.7.2013 they were directed to appear again on 19.7.2013 on which date Order was to be passed. But no Order was passed on 19.7.2013. But on 24.7.2013 the Ld. Civil Judge passed the Order cancelling the temporary revocation of the two heirship certificates with liberty to pursue normal course of law. According to the Ld. Counsel, Order dt.24.7.2013 was not issued and as such they did not have any knowledge until 21.2.2014 when the applicant enquired the status of the case from his Counsels. At that time, when they checked the record they came to know about the existence of the impugned Order dt.24.7.2013. The applicant then decided to file an appeal and the memo of appeal alongwith the instant application could be finally filed on 5/3/2014. According to the Ld. Counsel there is no negligence on the part of the applicant and that from the time they gained knowledge of the existence of the impugned Order, the matter have been diligently pursued for challenging the Order. The Ld. Counsel argued that the cause of delay is just and reasonable and that no prejudice would be caused to the respondent if the delay is condoned.

a. Per contra, Mr. Lalbiaknunga Hnamte, Ld. Counsel for the respondent submitted that the settlement certificate in question have all along been in their possession, so when Heirship Certificate Case No.1758/12 was issued in her favour, mutation was done in her name. The respondent came to know about the existence of heirship certificate in favour of the applicant only when Malsawmtluangi representative of the applicant appeared before the Ld. Civil Judge reporting about the existence of two heirship certificates. According to the Ld. Counsel, the applicant being the ex-husband of the deceased who divorced in the year 1998 does not have any right to claim the properties of his divorced wife. The Ld. Counsel submitted that after hearing the parties the Ld. Civil Judge passed the impugned Order dt.24.7.2013. On learning about the Order dt.24.7.2013, very cleverly, made his daughter H.Zohmangahi file and application for grant of heirship certificate in respect of the same plot of land which was issued vide Heirship Certificate No.1184 of 2013 dt.25.7.2013. According to the Ld. Counsel, the applicant knew very well the existence of Order dt.24.7.2013 and very cunningly made his daughter H.Zohmangaihi file an application for grant of heirship certificate on 25.7.2013. The Ld. Counsel argued that the same H.Zohmangaihi signed a No Objection certificate at the time when her father

applied for heirship certificate. This conduct clearly proves that the applicant has knowledge of the existence of the Order dt.24/7/2013 and thus pray to reject the application.

4. Heard the parties and perused pleadings alongwith its annexures. While dealing with an application for condonation of delay, the number of days delay is not the prime consideration, the question is whether delay was due to any carelessness or negligence on the part of the applicant. The Court also to consider whether due to the delay prejudice is caused to the other party, who by such time has acted upon the impugned order and would suffer loss if the Order is set aside.

5. In the instant case, the main contention of the applicant is that he did not have the knowledge of the existence of the Order dt.24.7.2013 untill 21.2.2014 when he enquired about the matter from his Counsel. On the contrary, the submission of the Ld. Counsel that H.Zohmangaihi who signed No Objection Certificate for issuance of Heirship Certificate in favour of her father, the applicant filed an application for grant of heirship in respect of the same plot of land indicates that the applicant knew the existence of Order dt.24.7.2013 and made his daughter apply for a fresh heirship certificate. There is no rebuttal that the order dt.24.7.2013 was not issued. Though case record was not called at the time of hearing, considering the ground taken in the application, at the time of writing the Order case record was called to examine the credibility of the submissions. Since H.Zohmangahi is not a party before us, it is not the purview of this court to find out who prompted her to make the application or her reasons for doing so.

6. From the record it is seen that the parties appeared and on 12.7.2013 they were heard at length as to whether there can be amicable settlement. The next date fixed was 19.7.2013 for Order. However, the record does not contain any Order passed on 19.7.2013. It was not put up on the subsequent date also. Thereafter, vide Order dt.24.7.2013, the ld. Civil judge by invoking the power u/s 151 CPC revoked the temporary cancellation of the heirship certificates and advised the parties "to go by normal course of law such as review or appeal if they feel aggrieved". The Order does not state that the said Order was passed in the presence of the parties though mention was made that by invoking the inherent jurisdiction summons were issued to holders of Heirship Certificate No.520/12 and Heirship Certificate No.1758/2012. Upon perusal of the record I am unable to find any material to suggest that the parties were actually present or that the Order was actually send out to the parties.

7. Presuming that the impugned Order was not issued to the parties/applicant, according to the Ld. Counsel for the applicant, the matter was enquired from them by the applicant on 21.2.2014. On that day, after going through the records, they only gained knowledge of the existence of the impugned Order. As per record, parties were present on 12.7.2013. It therefore means that the applicant waited for long 7 months to know the outcome of the case. This conduct on the part of the applicant appears to be a bit strange and unusual.

8. Be that as it may, from the grounds stated in the memo of appeal as well as from the verbal submissions of the parties, it has been brought to the notice of this court that three heirship certificates have been issued in respect of the same landed property.

9. The honb'le Gauhati High Court in the case of **Utpal Roy Barman versus Kiriti Roy Barman** reported in **2012(3) GLT 298** has held :-

“15.....The basic principle is to adopt a liberal approach keeping an eye to substantive justice and not take a pedantic approach to reject the prayer for condonation of delay. The court should not run after finding fault rather it should balance between the gravity of the right that would be affected for rejection of the prayer for condonation and the approach that the court thinks to be appropriate in a given case.....”

16.....On the other hand if delay is not condoned, the right to appeal as is available with the appellant petitioner would be scuttled for ever and he would be deprived of that right. The appellant –petitioner in the memo of appeal cited important debatable grounds with regard to the impugned judgment and preliminary decree.....”

10. In the instant case since there is no material to show that the impugned orders were actually sent out to the parties and there being no specific mention in the order that the parties were present, I am of the view that sufficient explanation have been made to condone the delay. Further, it is seen from the decision of the honb'le Gauhati High court cited above that the contents/grounds of appeal can be looked into even for the purpose of condonation of delay. In the instant case, upon perusal of the grounds stated in the appeal, I am of the considered view that it would be in the interest of the parties to decide the matter on merit.

11. For the reasons indicated above, the delay of 392 days in filing the appeal is condoned.
12. Parties are to bear their respective costs.
13. Pronounced in open court and given under my hand and the seal of this Court on this the 27th day of May, 2014.

Sd/- HELEN DAWNGLIANI
Addl. District & Sessions Judge
Aizawl Judicial District, Aizawl

Memo No. ____/AD&SJ(A)/2014 : Dated Aizawl, the 27th May, 2014
Copy to: -

1. H. Lalbiaktluanga through Counsel Mr. R. Laltanpuia, Advocate.
2. Thangmuri through Counsel Mr. Lalbiaknunga Hnamte, Advocate.
3. Registration Section.
4. Guard File.
5. Case Record.
6. Calendar Judgment.

P E S H K A R