

IN THE COURT OF THE CIVIL JUDGE – II
AIZAWL DISTRICT, AIZAWL
MIZORAM

Interlocutory Application No 23 of 2015
Arising out of Review Petition No. 23 of 2015
Arising out of Heirship Case No 358 of 2011

Smt V Zodinpuui : Petitioner
D/o V Sangliana (L)
R/o Luangmual, Aizawl
Aizawl District

Versus

Smt Lalnunsangi : Opposite Party
W/o V Sangliana (L)
R/o Dam Veng, Aizawl
Aizawl District

BEFORE

H. LALDUHSANGA, Civil Judge

Counsel for the Petitioner : Shri. B Lalramenga, Advocate & ors
Counsel for the Opposite Party : Shri. W Sam Joseph, Advocate & ors

ORDER

Dated: 20.06.2016

INTRODUCTION OF THE CASE

1. This is an application under Section 5 of the Limitation Act, 1963 for condoning a delay of 1469 days in filling the Review Petition against the impugned order Dated 24.10.2011 passed by the Hon'ble Court of Shri Lalngaihmaria Zote, Civil Judge –I II, Aizawl, Mizoram in Heirship Certificate No 358 of 2011 and also against the said Heirship Certificate itself on 14.1.2.2016 by Smt V Zodinpuui D/o V Sangliana (L) R/o Luangmual, Aizawl, Aizawl District. Admitted and registered as Interlocutory Application No 616 of 2015 arising out of Review Petition No 23 of 2015.

ARGUMENT

2. The Ld Counsel for the Petitioner submitted **inter alia** that the Petitioner filed a petition for a Heirship Certificate on 12.10.2015 in respect of the LSC No AZL – 268 of 1974 left by her deceased father namely Shri V Sangliana and registered as Heirship Certificate Petition No 1830 of 2015. When the Public Notice was made through the two leading Local Newspapers as per directed by the Court, it was found that the Opposite Party in the present case had already applied. Being registered Heirship Certificate No 358 of 2011 and obtained the same from the Hon'ble Court of the Civil Judge - III, Aizawl, Mizoram. Hence, Review is being preferred and the Review Petition was filed and registered as Review Petition No 23 of 2015 A/o Heirship Case No 358 of 2011 along with this petition for condonation of delay.
3. The Ld. Counsel for the Opposite Party on the other hand objected **inter alia** that the present petitioner filed no objection at the time of filling a petition for Heirship Certificate No 358 of 2011. There was also a delay of 1469 days in filling the Review petition which showed negligence. There must be sufficient cause and reasons for condoning delay as per Law and also decided by the Hon'ble High Courts and the Supreme Court. The Ld. Counsel pointed out Section 101 of the Indian Evidence Act, 1872 and the decisions made in RSA No 5 of 2015 by the Hon'ble Gauhati High Court, Civil Appeal No 3536 of 2008 by the Hon'ble Supreme Court and others.
4. The Ld. Counsel for the Petitioner on the other hand raised The Collector Land Acquisition, Anantnag & anr Vs MST. Katiji & ors (1987) 2 SCC 107, N. Balakrishnan Vs M Krishnamurthy (1998) 7 SCC 123 and others.

DECISION AND REASONS THEREOF

5. Heard the Ld. Counsels for both the Parties and perused all the documents on record including the cited decided cases. It is found that the Petitioner is the alleged daughter of deceased Shri V Sangliana who had left the LSC No AZL – 268 of 1974. The Opposite Party is the alleged wife of the said deceased. After the death of her husband, the Opposite Party had applied and obtained Heirship Certificate No 358 of 2011 in respect of LSC No AZL – 268 of 1974 left by her deceased husband from the Hon'ble Court of Civil Judge – III, Aizawl.
6. Later, the Petitioner applied for Heirship Certificate in respect of the same LSC left by her deceased father namely Shri V Sangliana and registered as Heirship Certificate Application No 1830 of 2015. However, the Petitioner came to know after as per directed by the Court making the Public Notice

through the two leading Local Newspapers that the Opposite Party had already obtained Heirship Certificate in respect of the said LSC No AZL – 268 of 1974. Hence, being aggrieved, the Petitioner filed the Review Petition against the impugned Order Dated 24.10.2011 passed by the Hon'ble Court of Shri Lalngaihmaria Zote, Civil Judge –I II, Aizawl, Mizoram in Heirship Certificate No 358 of 2011 and against the said Heirship Certificate itself on 14.12.2015 and also under Section 5 of the Limitation Act, 1963 for condoning a delay of 1469 days in filing the said Review Petition.

7. I have heard the rival submission of the Ld. Counsels for both the Parties and perused all the documents available. It might touch merit of the main case but I would extract my considered view as considered necessary. It is found that an Objection in respect of Heirship Certificate No 358 of 2011 had not been invited by the Hon'ble Court and Public Notice was not made out before granting the said LSC. While the Petitioner is the alleged daughter of the said deceased leaving behind the said plot of Land and considered having a **Locus-Standi** to file the present case but, she had not been provided an opportunity of being heard by the Hon'ble Court prior to issuance of the said Heirship Certificate No 358 of 2011 to the Opposite Party. Despite argued that the Petitioner had not filed any objection at the time of filling the petition for Heirship Certificate in the year 2011 by the Opposite Party. However, as said in the above, under such situation, the Petitioner would not have heard about applying and obtaining Heirship Certificate No 358 of 2011 by the Opposite Party so as to enable her to file a Review petition in time and within the period allowed by the Act. In fact, an objection was neither filed nor consent given by the Petitioner at the time of filling the Heirship Certificate Application No 358 of 2011. Hence, after considering the facts, the circumstances and the reasons for delay, I do not hesitate to hold a lenient and liberal view here. The reasons and explanation made by the Ld. Counsel for the Petitioner was considered sufficient and reasonable and found no gross negligence or deliberate inaction on the part of the Petitioner.
8. For all these reasons, I would neither stand in the Petitioner's way of challenging the said Heirship Certificate No 358 of 2011 nor shut the door at this stage by refusing her petition for condonation of delay. Let the Petitioner be given condonation of delay and challenge the case. Before parting out, it would lastly be spelt out that it might not be so wrong to say that condoning delay is a discretionary power of the Court and delay can be condoned on equity of Justice. The Hon'ble Court's decided cases listed here below inspired this Court-

"Condonation is discretionary and has to be liberally construed". Apangshu Mohan Lodh
Vs Tripura, (2004) 1 SCC 119.

"The expression 'sufficient cause' in Sec 5 must receive a liberal construction so as to advance substantial justice". G Ramagowda Vs Special Land Acquisition Officer, AIR 1988 SC 897.

9. Hence, the '1469 days' delay for preferring review petition is hereby condoned.
10. With this Order, this Interlocutory Application No 616 of 2015 arising out of Review Petition No 23 of 2015 stands disposed of.
11. Give copy of this Order to all concerned.

Sd/- LALDUHSANGA

Civil Judge-II

Aizawl District, Aizawl, Mizoram

Dated 20th June, 2016

Memo No..... :

Copy to :

1. Smt V Zodinpuii D/o V Sangliana (L) R/o Luangmual, Aizawl thorugh Counsel Shri B Lalramenga Advocate & ors.
2. Smt Lalnunsangi W/o V Sangliana (L) R/o Dam Veng, Aizawl through Counsel Shri W Sam Joseph Advocate & ors.
3. The District Judge, Aizawl.
4. i/c Judicial section.
5. Case record.
6. Guard file

PESHKAR