

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 20th JULY, 2017

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No.01 of 2016 in RFA No.18 of 2016

Appellant : Shri Taktuk Bhutia @ T. T. Bhutia,
Managing Director,
M/s. North East Group of Engineers (P) Ltd.,
M. G. Marg,
Gangtok,
East Sikkim.

versus

Respondents :

1. M/s. Pure Coke,
17, Government Place East,
4, Esplanade Mansion,
Kolkata – 700 069,
West Bengal.
2. Shri Tamal Ghosal,
Partner,
M/s. Pure Coke,
17, Government Place East,
4, Esplanade Mansion,
Kolkata – 700 069,
West Bengal.
3. Shri Pankaj Tibrawala,
Partner,
M/s. Pure Coke,
17, Government Place East,
4, Esplanade Mansion,
Kolkata – 700 069,
West Bengal.
4. M/s. Vodafone Essar South Limited,
C-48, Okhla Industrial Area,
Phase II,
New Delhi – 110 020.
5. M/s. Tata Teleservices Limited,
Jeevan Bharati,
10th Floor,
124, Connaught Circus,
New Delhi – 110 001.

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Application for condonation of delay in re-filing the
RFA under Rules 16, 17 and 18 of the Sikkim High
Court (Practice and Procedure) Rules, 2011

Appearance

Mr. Jorgay Namka, Legal Aid Counsel for the Appellant.

Mr. Sudesh Joshi, Mrs. Manita Pradhan and Mr. Sujan Sunwar,
Advocates for the Respondents No.1 to 3.

Mr. Sudhir Prasad, Advocate for the Respondent No.4.

Mr. Megh Nath Dhungel, Advocate for Respondent No.5.

O R D E R

Meenakshi Madan Rai, J.

1. The instant Petition under Rules 16, 17 and 18 of the Sikkim High Court (Practice and Procedure) Rules, 2011 (for short "P. P. Rules"), purports to be a Petition for condonation of fifty-one days delay, in filing the Regular First Appeal (RFA).

2. The facts relevant for the disposal of this Petition are that, on 07-10-2015, the Defendants No.1 to 3 (the Respondents No.1 to 3 herein), filed an Application under Order VII Rule 11, read with Section 151 of the Code of Civil Procedure, 1908 (for short "CPC"), before the Learned District Judge, East Sikkim, at Gangtok, in Money Suit No.06 of 2015, *Taktuk Bhutia vs. M/s. Pure Coke and Others*. The Application was allowed vide the impugned Order dated 12-05-2016, *inter alia*, with the finding that the Suit was barred by limitation and the Court had no jurisdiction in the matter, thereby dismissing the Suit of the Plaintiff (the Appellant herein).

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3. Assailing the impugned Order for the first time before this Court on 09-08-2016, the Appellant filed a First Appeal from Order (FAO), according to the Appellant, within the period of limitation, but was not listed before the Court, due to defects pointed out therein. On 15-10-2016, the FAO was re-filed after curing of defects. The Registry declined to place the matter before the Court for a second time as the Counsel for the Appellant lacked a specific letter from the Sikkim State Legal Services Authority (SSLSA), appointing him as Counsel for appearance in the matter before the High Court. Consequent thereupon, the SSLSA was approached, necessary letter obtained and the FAO re-filed on 10-11-2016. Following the above events, the Appellant again withdrew the FAO No.03 of 2016 on 15-11-2016 and on being so advised, filed the present RFA on 16-11-2016, leading to, according to him, a total delay of fifty-one days. That, the delay occurred due to non-availability of the Appellant and also due to the ensuing festive season. That, the Appellant shall suffer irreparable loss and injury, if the Appeal is not allowed, hence, the Petition be allowed condoning the delay on the grounds put forth.

4. In response, it was contended by Learned Counsel for the Respondents No.1 to 3 that, firstly, the Appellant has not come to the Court with clean hands, as the Plaint reveals that the contract was awarded to the North-East Group of Engineers Private Limited and not to the Petitioner by name, i.e., Taktuk Bhutia. The contract being between two Companies, it is evident that he is filing the Suit in a representative capacity, being the Managing Director of the

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Company. But he has obtained free Legal Aid, because he is a Tribal, which he is not entitled to in terms of Section 12 of the Legal Services Authorities Act, 1987 (in short "Legal Services Act") and Regulation 30(6) of the Sikkim State Legal Services Authority Regulation, 1998 (in short "SSLSA Regulation"), in view of the foregoing circumstance, thereby misleading the Court. In the next leg of his argument, it was contended that the delay infact is not of "fifty-one days", but of "one hundred days" inasmuch the impugned Order having been pronounced on 12-05-2016, the limitation expired on 10-08-2016 and the appeal was admittedly filed on 16-11-2016. The Appellant's ground for delay having occurred on account of the filing of the FAO is not a *bona fide* ground, as two months were evidently taken to rectify defects. That, although the Appellant attributed the delay also to the lack of appointment letter from SSLSA, no correspondence was placed before the Registry to substantiate this point. Thus, the Petition is frivolous and deserves dismissal. Reliance was placed on the decisions of ***Esha Bhattacharjee* vs. *Managing Committee of Raghunathpur Nafar Academy and Others***¹ and ***Basawaraj and Another* vs. *Special Land Acquisition Officer***².

5. The Respondent No.5 in his Written Response averred that the grounds furnished for the delay do not reveal "sufficient cause" as required under Section 5 of the Limitation Act, 1963 (for short "the Limitation Act"). That, the errors committed by the

¹ (2013) 12 SCC 649

² (2013) 14 SCC 81

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Appellant while filing the present Appeal are not *bona fide* mistakes and are no grounds for condoning the delay. Moreover, this Court vide Order dated 15-11-2016 passed in FAO No.03 of 2016 had allowed the Appellant to withdraw the FAO with liberty to file afresh, but had not condoned the delay. That, the delay of fifty-one days is deliberate and unexplained, and thereby ought to be dismissed.

6. No verbal submissions were placed by Learned Counsel for Respondents No.4 and 5.

7. Anxious consideration was given to the rival contentions of Learned Counsel for the parties and the impugned Order dated 12-05-2016 perused.

8. Although the Petition purports to be one for condonation of delay, the provisions under Rules 16, 17 and 18 of the P. P. Rules, have been erroneously invoked, instead of the provisions of Section 5 of the Limitation Act. The said rules are being reproduced hereinbelow for convenience;

"16. Court's Power to dispense with compliance with the Rules:- The Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules and may give such directions in matters of practices and procedure as it may consider just and expedient.

17. Power of Court to make appropriate orders:- An application to be excused from compliance with the requirements of any of the rules shall, in the first instance, be placed before the Registrar who may without interfering or dispensing with any mandatory requirements of the rule shall place before the Court for appropriate order thereon, on a convenient day.

18. Inherent power of the Court not affected:- Nothing in these Rules shall be deemed to limit or

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otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

A bare reading of the aforesaid provisions would indicate that the Court is not clothed with powers to waive statutory provisions.

9. Be that as it may, even if, this Court for the purpose of doing real and substantial justice between the parties, is to presume that the Petition is one under Section 5 of the Limitation Act, the Appellant under the said provision is required to satisfy the Court that he has “sufficient cause” for not preferring the Appeal, or making the Petition within the period prescribed.

10. In the light of the above principle, we may examine whether the facts placed before this Court, discussed in *seriatim*, would establish “sufficient cause”.

- (i) The impugned Order having been issued on 12-05-2016, the period of limitation would end on 10-08-2016, being ninety days, in terms of Article 116 of the Limitation Act. The FAO was filed on 09-08-2016, which was evidently not placed before the Court on account of defects pointed out. After the defects were cured, the FAO was filed for the second time on 15-10-2016, but remained unlisted due to dearth of letter of appointment of Legal Aid Counsel from the SSLSA. Rectifications were made as per requisites of the Registry and the FAO once again filed on 10-11-2016. Thereafter, the appellant withdrew the FAO, registered as FAO No.03 of 2016, on 15-11-

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2016, and on 16-11-2016 filed the RFA along with the instant Petition seeking condonation of delay.

- (ii) Simple calculations would reveal a total delay of ninety-eight days instead of the fifty-one days sought to be erroneously projected by the Petitioner. As per the Petitioner, a delay of twenty-seven days occurred between 09-08-2016 and 15-10-2016 which is clearly a wrong calculation. That, from 15-10-2016 to 10-11-2016, a delay of twenty-four days occurred, this is also erroneous. What the Appellant seeks to submit by stating that he came to learn of “the above anomalies only on 21-10-2016” is anyone’s guess, considering the events and dates that have already been unfolded above.
- (iii) This Court in ***Shri Tara Kumar Pradhan vs. Shri Yuba Kumar Pradhan***³ has pointed out that an Application or RFA cannot be deemed to be filed, unless all defects are cured, the same observation holds good for the facts and circumstances herein.
- (iv) The paucity of a letter from the SSLSA was the other ground listed for the delay, but compliance thereafter took more than twenty-six days. What ensued in the twenty-six days is not forthcoming from the Petitioner.

³ I.A. No.01 of 2016 in RFA No.16 of 2016 decided on 19-04-2017

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- (v) Pertinently, it may be observed here that the grant of free Legal Aid to the Petitioner is a matter which can be considered by the SSLSA and if after scrutiny the requisite conditions are unfulfilled in terms of Section 12 of the Legal Services Act and Regulation 30(6) of the SSLSA Regulation, the free Legal Aid is liable to be withdrawn.
- (vi) The ground of non-availability of the Appellant is indeed absurd. If the Appellant was so interested, he could have made himself available to enable his Counsel to take steps. Furthermore, the reasons and grounds of such non-availability have not been elucidated. Nothing prevented the Appellant from approaching the Registry during the festive season, apart from which the dates of such festivities have not been disclosed.

11. In this context, this Court is aware that Courts should avoid a pedantic approach while making technical considerations for the delay, in order to have a justice-oriented approach and mete out substantial justice. At the same time, one cannot lose sight of the fact that no presumption can be attached to deliberate causes of delay, such as gross negligence as exhibited hereinabove. In this regard, reference can be made to the decision in **Esha Bhattacharjee**¹ wherein it was held as follows;

"21.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are

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relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters."

The parameters of consideration have been succinctly set forth, the grounds put forth by the Petitioner do not merit

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consideration as it is evident that no attention has been paid to the drafting, the delay calculated is erroneous and above all, no reasons even on week to week basis for the delay have been placed before the Court, giving the impression that the Court is being taken for granted. The Petition obviously cannot be dealt with in a routine manner as the interest of not only the Petitioner, but the Opposite party has also to be borne in mind.

12. The grounds for delay taken by the Petitioner fall short of the requirement of Law, as "sufficient cause" for not taking steps on time is sadly devoid in the instant case.

13. Resultant, the grounds put forth deserve no consideration. Consequently, the Petition is dismissed, as also the Appeal.

14. Copy of this Order be sent to the Learned Trial Court along with Records of the Court, and to the Member Secretary, SSLSA forthwith for information and compliance.

Sd/-
(**Meenakshi Madan Rai**)
Judge
20-07-2017

Approved for reporting : **Yes**

Internet : **Yes**