

High Court of Sikkim

Record of proceedings

RFA No. 12 of 2016

Punam Tamang vs. Jagat Chettri and Others

BEFORE

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

10. 10-08-2017 Present : Mr. Zangpo Sherpa and Ms. Mon Maya Subba, Advocates for the Appellant.

Mr. Pema Ongchu Bhutia, Advocate for the Respondents No.1 and 2.

Mr. Karma Thinlay Namgyal, Senior Government Advocate with Mr. S. K. Chettri, Assistant Government Advocate for the State-Respondent No.3.

Heard on I.A. No.01 of 2016.

This is an Application seeking condonation of delay of forty days in filing the Appeal. The grounds set forth, *inter alia*, are that, after pronouncement of the impugned Judgment on 24-03-2016, copy was applied for on 28-03-2016 and made available on 01-04-2016. On receipt thereof, the Counsel informed the Appellant, who, however, being posted as a Graduate Teacher in Government Senior Secondary School, Jorethang, South Sikkim, was unable to take steps immediately, having joined the said School only in the month of February, 2016. Apart from which, she was nursing her one and half year old infant. On 17-04-2016, the Appellant met her Counsel and requested him to examine her case which took about two weeks. The Counsel conveyed his decision informing her that Appeal could be filed on 29-04-2016. On 01-05-2016, the Appellant came to Gangtok and met with her Counsel and sought a week's time to discuss the matter with her family members in view of the costs involved in filing the Appeal. On 08-05-2016, she returned to Gangtok and met her Counsel having decided to pay the necessary professional charges. Till 04-06-2016, she took some time to collect necessary

monetary assistance from her family and on being unable to collect the required amount requested her Counsel to prepare the Appeal without engaging a Senior Counsel. Thereafter, from 06-06-2016 to 25-06-2016, she was stationed at Jorethang and could not meet any Advocate practising before this Court. On 26-06-2016, however, she contacted the Learned Counsel Shri Zangpo Sherpa who agreed to take up her matter, who remained indisposed from 03-07-2016 to 29-07-2016, on account of a medical emergency of his father, who had to be admitted to a Delhi hospital. Thus, the Counsel after returning on 30-07-2016, filed the Appeal on 05-08-2016, which led to the delay of forty days. It is prayed that the said delay having been explained satisfactorily be condoned.

In vehement resistance to the Petition, Learned Counsel for the Respondents No.1 and 2, while relying on the decision of the Hon'ble Supreme Court in *Basawaraj & Another vs. Special Land Acquisition Officer : (2013) 14 SCC 81*, submitted that the Appellant was present in the Court on the date of pronouncement of Judgment and could have straightway applied for a copy but, neglected to do so. The grounds put forth are unsatisfactory as the Appellant not diligent. Moreover, as she was seeking a relief, she ought to have come to Gangtok at the earliest opportunity and taken necessary steps, hence, the Petition be dismissed.

The Senior Government Advocate has no objection for Respondent No.3.

After due consideration of the grounds put forth, I find that the Appellant has satisfactorily explained the delay. One cannot overlook the fact that a Government servant cannot easily avail leave, added to which, the Appellant was also a nursing mother and could not leave her child hungry. The personal difficulties of the Counsel have aggravated the situation and hence, I find that the delay deserves to be and is accordingly condoned.

Consequently, Petition is allowed.

I.A. No.01 of 2016 stands disposed of.

Heard on admission.

Admit.

List for hearing on 16-08-2017.

Judge
10-08-2017

Index : ~~Yes~~/No

Internet : Yes/~~No~~

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