
(2024) 10 SIK CK 0028

Sikkim High Court

Case No: Criminal Leave Petition No. 04 Of 2024

Tej Kumar Pradhan

APPELLANT

Vs

Khagendra Kumar Chettri

RESPONDENT

Date of Decision: Oct. 30, 2024

Acts Referred:

- Limitation Act, 1963 - Section 5

Hon'ble Judges: Meenakshi Madan Rai, J

Bench: Single Bench

Advocate: Pramit Chettri, Arun Rai, N. Rai, Yozan Rai

Judgement

Meenakshi Madan Rai, J

1. I.A. No.01 of 2024 is an application filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of thirty-seven days in

filing the Leave to Appeal. It is submitted by Learned Counsel for the Petitioner that originally the Appeal was filed on 11-05-2024. The Registry

raised a defect on 13-05-2024 inasmuch as the Appeal contained the prayer seeking leave to file the Appeal but not a separate Petition as required by

the relevant rules. The defect was accordingly rectified and the Memo of Appeal along with the Leave Petition was filed on 20-06-2024. On 20-09-

2024, the Petition seeking condonation of delay in filing the Leave Petition was submitted. That, the delay occurred on account of an inadvertent error

of the Learned Counsel in non-filing of the Leave Petition and thereafter having taken time to submit it due to the illness of the Petitioner's mother

on account of which instructions could not be obtained. The delay having been sufficiently explained may be condoned.

2. Learned Senior Counsel for the Respondent objected to the said prayers on grounds that erroneous submissions have been advanced before this

Court with regard to the dates as the Memo of Appeal before this Court does not contain a prayer with regard to seeking leave of the Court to file the

Appeal. That, the grounds for delay given in I.A. No.01 of 2024 and in the Petition under Leave to Appeal vary from each other and deserve no

consideration as in the Leave Petition the delay has been explained as having occurred due to defects pointed out by the Registry and rectification

thereof, whereas in the Leave Petition it is submitted that illness of the parents of the Petitioner led to the delay.

3. I have given due consideration to the rival submissions advanced. The conundrum pointed out by Learned Senior Counsel for the Respondent that

there is no prayer seeking leave to file the Appeal in the Memo of Appeal, is for the reason that the Memo of Appeal was filed afresh after rectifying

the defect pointed out. Consequently, the prayer seeking leave to file Appeal was removed from the subsequent Memo of Appeal and a separate

Petition seeking leave was filed. This has been explained by Learned Counsel for the Petitioner in the Court room. I find also that the final Leave

Petition as well as I.A. no.01 of 2024 contains the grounds of the illness of the mother of the Petitioner and on this count there is no contradiction

between the grounds advanced in the Leave Petition and I.A. No.01 of 2024. Thus, having given due consideration to the grounds advanced for the

delay, I am of the considered view that the delay has been sufficiently explained and is accordingly condoned.

4. I.A. No.01 of 2024 stands disposed of accordingly.

5. List on 05-12-2024.