

(2004) 02 GAU CK 0021

Gauhati High Court (Agartala Bench)

Case No: Civil Miscellaneous Application No. 24 of 2003 in regular second appeal No. 17 of 2003

Upendra Kumar Debnath

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision: Feb. 11, 2004

Citation: (2005) 1 GLR 182 : (2004) 2 GLT 18

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: S. Talapatra, S.K. Bhattacharjee and B. Banerjee, for the Appellant; D.K. Bhattacharjee, GA, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

I.A. Ansari, J.

By making this application, the applicant, who is the appellant in RSA No. 17/2003, has sought for condonation of delay of 215 days in preferring the second appeal aforementioned.

2. For seeking condonation of delay, the case of the application is, briefly stated, thus : After the impugned judgment and order, dated 30.3.2002, was passed, in Title Appeal No. 14/2001, the applicant-appellant applied for certified copy, on 11.4.2002, for the purpose of filing second appeal. The certified copy was delivered to the applicant on 18.5.2002, whereupon the applicant handed over file of the entire case to his counsel, Sri Suohasis Talapatra, on 12.7.2002, for preparing the second appeal, but on 13.7.2002, the chamber of the applicant's counsel was shifted from Harish Thakur Road, Krishnanagar, Agartala to Kunjaban Road, Agartala, and in the process of shifting, two files, one of the present applicant and the other of one Sri Bijoy Kumar Das (applicant in CM Appln. No. 26/2003) were lost. The files could be traced out by the counsel only on 22.4.2003 and on being informed by the counsel, the applicant, immediately, came to his counsel and the appeal was accordingly filed

with prayer for condonation of delay on 26.4.2003. There was, according to the applicant, no laches on his part and the appeal could not be filed in time for reasons beyond his control.

3. The respondents have resisted the prayer for condonation of delay by filing their objection, wherein it has been submitted, inter alia, that there is no substantial question of law involved in the impugned judgment and order enabling the applicant to prefer second appeal and that the delay has not been convincingly explained.

4. I have heard Mr. S. Talapatra, learned counsel for the applicant, and Mr. D.K. Bhattacharjee, learned Government Advocate, Tripura. I have also perused the materials on record.

5. Objecting to the prayer for condonation of delay, Mr. D.K. Bhattacharjee, learned State counsel, has submitted that non-traceability of file is not a sufficient ground for condoning the delay. Reliance, in support of this submission, is placed by Mr. Bhattacharjee on *State of Manipur v. All Manipur Regular Post Vacancies Substitute Teachers' Association*, reported in (1995) 2 GLR 102. It is also submitted, on behalf of the respondents, that the refusal to condone the delay would not deny any substantial justice to the applicant inasmuch as the applicant has not been able to make out a case for preferring second appeal.

6. On perusal of the materials on record and upon hearing the learned counsel for the parties, what attracts my attention, most prominently, is that the present one is a case in which no fault lies on the applicant nor was there any laches or negligence on his part inasmuch as he was not the one, who had lost track of his file, but that it was his counsel, who, in the process of shifting of his chamber, lost track of the files. Even if there was some negligence or laches in delayed filing of the appeal, the same was attributable to the counsel for the applicant and, hence, the applicant cannot be saddled with the consequences of the acts of negligence, if any, on the part of his counsel. It is trite that a person seeking justice cannot be refused entry to the Court of law, if the delay in approaching the Court suffers not on account of his own negligence or laches, but on account of negligence and/or laches on the part of his counsel. Reference made to the case of *State of Manipur v. All Manipur RRVST Association*. (supra) is entirely misplaced inasmuch as the case, relied upon, was a case in which the applicants themselves lost track of the files and sought condonation of delay on such a ground. Repelling the prayer for condonation of delay, the Division Bench of this Court held that non-traceability of the files showed "sheer and total negligence on the part of the officers and employees of the applicants". The law laid down in the case of *State of Manipur v. All Manipur RRVST Association*. (supra) cannot be extended to a case, where the negligence or laches cannot be attributed to the applicant(s) but to his/their counsel.

7. As regards the submission of Mr. Bhattacharjee, learned State counsel, that the refusal to condone the delay would not adversely affect the interest of the applicant inasmuch as the second appeal has no merit, suffice it to mention that the question as to whether the second appeal is or is not maintainable will be taken up for consideration at the time of admission of the second appeal itself.

8. Coupled with the above, it is also important to bear in mind that in their objection filed by the respondents, the respondents have not been able to show as to how the negligence of the counsel for the applicant can be treated as the negligence of the applicant himself.

9. Considering, therefore, the matter in its entirety, I am firmly of the view that the present one is a case, which warrants condonation of delay.

10. In view of the above and in the interest of justice, the delay of 215 days is hereby condoned.

11. The Misc. Application shall accordingly stand disposed of.

12. Let the connected second appeal, i.e., RSA No. 17/2003, be, now, listed for admission.