

WA No. 55 of 2014
IN WP(C)No. 311 of 2013

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR. JUSTICE S.R. SEN

19.03.2015

Mr ND Chullai, learned senior GA, appears for the appellants.

Mr AH Hazarika, learned counsel, represents the respondent.

Learned senior counsel for the State in view of incongruous averments made in the affidavit filed by Superintendent of Police, Shillong, like the one that a police personnel on VIP duty can retain arms without ammunitions and vice-versa for indefinite period, which appears to be illogical for the reason that in the absence of either of two namely, arms and ammunitions, the security person cannot perform duty, prays for time till 07.04.2015 for filing a fresh affidavit. List on 07.04.2015.

JUDGE

CHIEF JUSTICE

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**BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

19-03-2015

Mr. R.Deb Nath, learned Advocate, appears for the appellant-Union of India.

Mr. S.P.Mahanta, learned Sr. Advocate, assisted by Mr. B.Lyngdoh, represents the respondents.

As learned counsel for the Union of India, is not ready with brief to argue the matter, on a request made by him, we grant him 2(two) weeks' time to prepare matter. List on 02-04-2015.

JUDGE

CHIEF JUSTICE

S.Rynjah

**BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

19-03-2015

None appears for the petitioner.

Mr. SP Mahanta, learned Sr. Advocate, assisted by Ms. S.Pde, learned Advocate, represents the respondents-Cantonment Board.

Mr. SC Shyam, learned Sr. counsel who appears for the Union of India is said to be in personal difficulty. On a request made by Mr. B.Deb, learned counsel, on his behalf for adjournment, the hearing is deferred for 2(two) weeks. In the meantime, learned counsel for the parties shall submit the details of pending cases. List on 02-04-2015.

JUDGE

CHIEF JUSTICE

S.Rynjah

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR. JUSTICE S.R. SEN

19.03.2015

Mr BK Deb Roy, learned counsel, appears for the applicant.

Mr M Sharma, learned counsel, represents the respondents.

We have heard learned counsel for parties and perused the pleadings of Misc. Case No. 99 of 2014 filed under Section 5 of Limitation Act, 1963 for condonation of 234 days delay in preferring the writ appeal.

The relevant parts of averments made in paras 3 to 10 of the application on reproduction would read as :

“ 3. That it is submitted most humbly that after completion of the hearing on 12.11.2013 the judgment was kept reserved/CAV and the learned counsel appearing on behalf of the appellant-writ petitioner was awaiting for the same. And meanwhile the Hon'ble High Court went on winter vacation and opened by the end of January 2014. And as usual the counsel for the petitioner/appellant was also not in the station.

4. That when the judgment was not delivered on the opening of the court your humble petitioner/appellant met his counsel when at that point of time the counsel advised that as soon as the judgment is passed he would inform accordingly. And your humble petitioner as usual kept in touch with his counsel and the petitioner meanwhile became highly involved because of his sons' SSLC Examination. However, when the counsel on record Shri BK Das, Advocate informed that sometime judgment are delayed due to over burden of works in the hand of the court and probably in case of your humble petitioner the same is delayed and as such your humble petitioner relied upon his such advise.

5. That your humble petitioner become worried when the judgment was found not delivered beyond reasonable time and on his personal initiative searched the matter at his personal level and going to the web site of the Hon'ble High court found that the judgment in case of his Writ Petition (C) No.

346/2009 has already been delivered on 03.03.2014 and therefore he at once met his counsel on record, Shri BK Das, Advocate who on his part had cut as sorry figure and immediately applied for certified copy of the same on 2.6.2014 and received the copy on 6.6.2014.

6. That after the certified copy was obtained your humble petitioner approached his counsel on record with a request for assailing the judgment on appeal and who on his part expressed his inability due to personal difficulties and the brief of the writ petition was withdrawn from him.

7. That the humble petitioner and his family friends in a body selected Shri VK Jindal, Sr. Advocate, Shillong and the matter for appeal was handed over to him. Shri VK Jindal, Sr. Advocate kept the record for about 47 days and returned the same expressing inability on certain grounds which your humble applicant could not fulfill.

8. That upon such return the matter was handed over to Shri N Das Gupta, Advocate who on his part accepted the brief on the condition that he would do the needful along with Shri R Deb Nath, Advocate, Shillong. And as ill luck would have it, Shri R Deb Nath, Advocate was to be admitted with the local NEIGRHMS Hospital, Shillong whereby the matter remained with him/them for long more than a month and ultimately because of his health condition, he/they returned the case record thereafter.

9. That your humble petitioner became helpless and was running from pillar to post and ultimately at the advise of the superiors approached the present counsel Shri R Choudhury, Advocate and his associates and who on perusal of the record hesitantly accepted the brief so returned by the Advocates earlier and feeling compassion for your humble petitioner and from the last part of September 2014 took over the case record for evaluating the possibility of preferring the appeal as made here in the body of the memorandum of appeal. And thereby it has taken as many as 58 days for preparation of the same upon thorough study and presented it duly as per norms of the Hon'ble High Court and thereby till the filing of the writ appeal a total 234 days have been found out as delay minus the stipulated period of 30 days for filing the writ appeal.

10. That as stated above there appears a net delay of 99 days for filing the instant writ appeal. And your humble petitioner-appellant submits that the

delay so caused for filing the appeal is not intentional and the reasons as stated above, were all beyond his control and there is no laches or negligence on his part as explained and the reason as stated above may kindly be treated as genuine and sufficient cause for the delay occurred in the presentation of the Memo of Appeal within time.”

Respondents No. 1 to 4 in reply thereto have filed objection vide application dated 27.01.2015. Paras 3 to 8 thereof being relevant are also reproduced hereunder :

“3. That the instant petition has been filed mechanically by the petitioner. the petition is misconceived and not maintainable in the eyes of law. I say that the petitioner has failed to file any material evidence and did not show any sufficient cause in the instant petition for condonation of delay of 234 days in filing the writ appeal and therefore the same is liable to be dismissed in limine.

4. That in reply to the averments made in paragraphs 1,2,3 and 4 of the petition, it is submitted that the averments made by the petitioner that his learned counsel was awaiting for the judgment which was delayed and that he was highly involved for his son’s SSLC Examination and had relied upon advise of the counsel are not sufficient grounds for not preferring the writ appeal within the specified period. I say that the delay could have been avoided by due care and attention by the petitioner and these grounds are not sufficient and hence the instant petition is liable to be dismissed.

5. That as regards the statements made in paragraphs 5,6,7 and 8, it is submitted that the petitioner has made a cooked up story without any supporting document and convincing evidence. In reply I beg to state that as per professional ethics a senior Advocate like Shri VK Jindal does not accept any brief directly and will not keep file with him for 47 days as alleged keeping in view of the gravity of the case and considering the short period of limitation for preferring the writ appeal therefore the reasons for delay stated in the petition that the brief of the case was kept with Shri VK Jindal Senior Advocate for 47 days and was returned by him showing his inability is not a good and sufficient reason and that the another Advocate Shri N Das Gupta accepted with condition that he would do the needful along with Shri R Deb Nath who was to be admitted in the hospital. I say that

all these explanations are neither reasonable nor plausible, and may not be worth of exercising judicial discretion in favour of the applicant.

6. That in reply to the statements made in paragraphs 9 and 10 of the petition, I beg to state that the averments made in the petition that for filing writ appeal the petitioner was running pillar to post and the present counsel Shri R Choudhury and his associates hesitatingly accepted the brief and took 58 days for preparation of the writ appeal are not tenable and unreasonable and not sufficient for condonation of delay and the same is a misuse of law for ulterior motives to harass the humble respondent/Bank and ex-facie lack bonafide.

I say further that the petitioner was not keen for filing the writ appeal and he was negligent and I say that everything was within his control and he failed to show any sufficient cause for delay of 234 days and the grounds taken herein are neither genuine nor sufficient as alleged and the petitioner has failed to specify as to how the total delay of 234 days became net delay of 99 days for filing the writ appeal and therefore the instant petition is liable to be dismissed.

7. That I say that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. It is most respectfully submitted that the petitioner has abused the due process of law and if liberal view is taken by this Hon'ble High Court in favour of the petitioner the same cannot be equated and it would be injustice to the answering respondent/Bank.

8. That the petitioner has been thoroughly negligent in implementing his right of appeal for last 234 days and the averments made in the petition are not correct and have been made without any cogent and supportive evidence and hence I pray this Hon'ble High Court that the instant petition may be dismissed with exemplary cost."

However, during the course of hearing on the last date, it was pointed out to the Court that the writ appellant has made certain serious allegations against some advocates, including a senior counsel of this Court that they are responsible for causing delay in filing the writ appeal. Thereafter, learned counsel for the applicant

has filed a Misc. Case No. 25 of 2015 inter alia with following averments, vide paras 7 to 10 thereof:

“7. That after carefully studying the restriction imposed upon the senior Advocate under relevant Act and Rule petitioner herein has understood that the errors and mistake cropped up could have been avoided and in fact delay for 234 days could have been made without making any reference to the senior Advocate or any other advocate.

8. That the lawyers on record while representing client should not have quoted the name of the senior Advocate or any other advocate who may take exception for any apparent allegation which even though may be innocently done.

9. That the petitioner herein after having proper introspection have realized that not amount of defence would be fair and as such petitioner hereby tender unconditional apology to the effect that in future petitioner and his lawyers would be cautious in drafting keeping in mind rules of the pleadings to the full extent so that no occasion may arise for such mistakes error or departure from the rule of pleadings.

10. That the Hon’ble Court may take a lenient view and be further pleased to expunge the name of the concerned lawyers for onward consideration of the related petition for condonation of delay for 234 days on the merit of the appeal. However, the petitioner herein shall also be ready to file a fresh petition after necessary correction in a manner as may be prescribed.”

Now learned counsel for the applicant Mr BK Deb Roy wants to retract the stand and withdraw the writ appeal which we are not inclined to accept in view of allegations made on affidavit and the issues need to be sorted out after hearing all the concerned parties by way of judicial pronouncement. At this stage, learned counsel for the applicant Mr BK Deb Roy prays for and is granted four weeks’ time to seek instructions. List on 21.04.2015.

JUDGE

CHIEF JUSTICE

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