

HIGH COURT OF SIKKIM
Record of Proceedings

I.A. No.01 of 2024 in RFA/49/2024 (Filing No.)

DEVI PRASAD SHARMA

APPLICANT

VERSUS

STATE OF SIKKIM AND OTHERS

RESPONDENTS

Date: 04.09.2024**CORAM: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

For Applicant Mr. N. Rai, Senior Advocate (Legal Aid Counsel).

For Respondents

R-1 to R-5

Mr. S. K. Chettri, Government Advocate.
Mr. Sujan Sunwar, Assistant Government Advocate.

R-6 & R-7

Mr. Karma Thinlay, Senior Advocate.
Mr. Zamyang N. Bhutia, Advocate.

R-8

Respondent No.8 present in person.

ORDER

1. Heard Learned Senior Counsel for the Applicant on I.A. No.01 of 2024, which is an application under Section 5 of the Limitation Act, 1963 (hereinafter, the "Limitation Act"), seeking condonation of 118 days' delay in filing the instant Appeal.

2. It is submitted by Learned Senior Counsel that, on 14-09-2023, the Court of the Learned Principal District Judge, Gangtok, Sikkim, in Title Suit No.32 of 2022 (*Devi Prasad Sharma vs. The State of Sikkim and Others*), pronounced the impugned Order under Order VII Rule 11 of the Code of Civil Procedure, 1908. The limitation for taking steps against the impugned Order expired on 13-12-2023. That, inadvertently instead of approaching this Court by filing a Regular First Appeal (RFA), a Petition under Article 227 of the Constitution of India being WP(C) No.01 of 2024 (*Devi Prasad Sharma vs. State of Sikkim and Others*), was filed by the Applicant on 03-01-2024. Thereafter, as advised, the Petition under Article 227 of the Constitution was withdrawn by the Applicant on 19-03-2024 and the instant RFA filed on

HIGH COURT OF SIKKIM
Record of Proceedings

10-04-2024. That, the delay has occurred on the ground of an inadvertent error committed by Learned Senior Counsel for the Applicant on account of which the Applicant ought not to suffer. Besides, the delay that occurred in filing the Petition under Article 227 of the Constitution and the filing of the instant RFA was due to the personal unavoidable engagements of Learned Senior Counsel for the Applicant. That, the Appeal merits a hearing as it involves important law points. Hence, the delay having been sufficiently explained and the onus for the delay lying mostly with Learned Senior Counsel for the Applicant, the delay may be condoned and the application disposed of accordingly.

3. Learned Government Advocate for the State-Respondents No.1 to 5 while resisting the arguments of Learned Senior Counsel for the Applicant seeking condonation of delay submitted that the Applicant has failed to put forth the "sufficient cause" for not preferring the Appeal.

4. Objecting to the Petition for delay Learned Senior Counsel for the Respondents No.6 and 7 submitted that Section 5 of the Limitation Act requires that the delay should be explained by "sufficient cause" and placed reliance on the Judgment of the Supreme Court in ***Sabarmati Gas Limited*** vs. ***Shah Alloys Limited***¹ wherein it has been explained that "sufficient cause" is the cause for which a party could not be blamed. Therefore, as the delay has not been explained sufficiently, it cannot be condoned.

5. I have heard Learned Counsel for the parties at length and given due consideration to the rival arguments advanced. It is evident that a *bona fide* mistake occurred on the part of Learned Senior Counsel

¹ (2023) 3 SCC 229

HIGH COURT OF SIKKIM
Record of Proceedings

for the Applicant in pursuing the remedy i.e., instead of an RFA a Petition under Article 227 of the Constitution came to be filed before this Court which was subsequently withdrawn. That thereafter, the delays that have occurred have been candidly explained as one on account of the engagement of Learned Senior Counsel for the Applicant and his inability to oversee the preparation of the Appeal on time.

6. On the anvil of the submissions of Learned Counsel for the parties, it must be pointed out that in ***G. Ramegowda, Major etc., vs. The Special Land Acquisition Officer, Bangalore***² the Supreme Court has held that the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of *bona fides* is imputable to the party seeking condonation of the delay. That apart, Section 14 of the Limitation Act provides that in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

7. In view of the facts and circumstances placed before me, admittedly, the delay occurred on account of Learned Senior Counsel for the Applicant and the delay does not appear to lack in *bona fides* or is it due to gross negligence or deliberate inaction. Besides the legal provisions cited above on this aspect, also favours the Applicant augmented by the fact that the party ought not to suffer if his Counsel

² AIR 1988 SC 897

HIGH COURT OF SIKKIM
Record of Proceedings

has been plagued with problems. The delay having been sufficiently and satisfactorily explained it is consequently condoned.

- 8.** I.A. No.01 of 2024 stands disposed of accordingly.
- 9.** Register the Appeal.
- 10.** Heard Learned Senior Counsel for the Applicant.
- 11.** Respondents No.1 to 7 are represented by their respective Learned Counsel; Respondent No.8 present in person.
- 12.** Admit the Appeal.
- 13.** Call for the records from the Learned Trial Court.
- 14.** List on 11-11-2024 as found convenient by the parties.

Judge
04.09.2024

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