

HIGH COURT OF SIKKIM
Record of Proceedings

I.A. No.01 of 2024 in RSA/46/2024/(Filing No.)

ONGDI SHERPA

APPLICANT

VERSUS

NIM TEMBA SHERPA AND OTHERS

RESPONDENTS

Date: 30.10.2024

CORAM:

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

For Applicant Mr. Karma Thinlay, Senior Advocate.
 Mr. Yashir N. Tamang, Advocate.
 Mr. Zamyang Norbu Bhutia, Advocate.
 Mr. Chetan Sharma, Advocate.

For Respondents

R-1 Ms. Gita Bista, Advocate (Legal Aid Counsel).

R-2 to R-6 Ms. Gita Bista, Advocate.

ORDER

1. Heard 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 65 days delay in filing the instant Appeal.

2. Learned Senior Counsel for the Applicant submits that the period of limitation for filing the instant Appeal is ninety days. The Order and Decree of the Learned First Appellate Court was pronounced on 31-10-2023, while the application seeking certified copy was made only on 08-01-2024, which was made available on 11-01-2024. That, the Applicant is about 59 years of age and having suffered a stroke in the year 2014 and has not fully recovered from the effects thereof and was thereby unable to collect the Judgment or to take steps on time. His son who is in the Indian Reserve Battalion was at the relevant time posted in Delhi and was therefore unable to assist his father. That apart, there were intervening Government Holidays and Court Vacation on account of which steps could not be taken as the Counsel on record was not in station for a majority of the month of January nor were there other Advocates who the Applicant could consult for taking steps

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against the impugned Judgment. Thereafter, the Learned Counsel on record also travelled out of station from the beginning of February till almost the end of February, on account of prior family commitment. The Applicant thereafter in the month of March fell ill and was advised bed rest for about two weeks. Hence, the delay occurred which has thereby being sufficiently explained and may be condoned.

3. Learned Counsel for the Respondents submits that the parameters prescribed under Section 5 of the Limitation Act have not been met by Learned Counsel for the Applicant and the grounds for delay not having been sufficiently explained the Petition deserves a dismissal.

4. I have given due consideration to the rival submissions advanced by Learned Counsel for the parties and in view of the grounds put forth as elucidated hereinabove, I am of the considered view that the delay has been sufficiently explained and is accordingly condoned.

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

6. Register the Appeal.

7. Call for the records from the Learned Courts below.

8. List on 04-12-2024.

Judge
30.10.2024

ds/sdl