GAHC010072982020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/47/2020

BIKASH CHANDRA PRADHANI
S/O- LT. BHUBAN CHANDRA PRADHANI, R/O- VILL- DAKHIN TOKRECHORA, PT. IV, P.O. AND P.S. GOLAKGANJ, DIST.- DHUBRI (ASSAM), PIN- 783334

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE COLLECTOR, DHUBRI, ASSAM, PIN- 783301

2:THE ASSTT. SETTLEMENT OFFICER
GOLAKGANJ REVENUE CIRCLE
P.O. AND P.S. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR G P BHOWMIK

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

Date : 30-06-2022

1. Heard Mr. D. Kalita, the learned counsel for the Petitioner and Mr. P.S. Deka, the learned Senior Government Advocate appearing on behalf of the State of Assam.

2. This is an application under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 challenging the order dated 30.01.2020 passed by the Court of the Civil Judge, Dhubri, whereby the application being registered as Petition No.1152 dated 04.09.2019 under Section 5 of the Limitation Act, 1963 was allowed thereby condoning the delay of more than 18 years in connection with Title Appeal No.32/19.

3. The brief facts of the instant case is that the Petitioner herein as Plaintiff had filed the suit being Title Suit No.331/1995 in the Court of the Munsiff No.1, Dhubri seeking declaration that the land described in Schedule-C to the plaint has been wrongly recorded as Khas in Khas Khatian No.1 and is a part and parcel of Dag No.844 in Khatian No.369 in village Dakhin Tokrarchera, Part-IV under P.S. Golakganj in the District of Dhubri; a decree for declaration that the plaintiff has got right, title and interest with a confirmation of possession over the Schedule-C land; a decree for declaration that the record in respect of the land specified in Schedule-C land so prepared by the defendant as khas is wrong and liable to be corrected in the name of the plaintiff under Dag No.844 of Khatian No.369 declaring the said to be the part of Schedule-A land; a decree for permanent injunction restraining the defendants from evicting and dispossessing the plaintiff from the Schedule-C land for cost and other reliefs. In the said suit, the defendants were at the State of Assam represented by the Collector Dhubri, and the Assistant Settlement Officer, Golakganj Circle, Golakganj.

4. The said defendants filed their written statement. In the said written statement, it was the specific stand of the defendants was that the plaintiff is an encroacher in the road side Govt. khas land and liable to be evicted. It was also the stand taken that the suit land neither belongs to settle land nor any part of

the Khatiandar. The Khatian was continued as ejmali an area of 2 Bighas 12 Lechas in Patta No.190 in Dag No.844 in the name of Bhuban Chandra Prodhani.

5. On the basis of the said pleadings, as many as 7 issues were framed. The plaintiff examined 2 witnesses including himself and exhibited some documents. The defendants side however did not adduce any evidence nor exhibited any documents. In deciding the Issue No.5 which pertains as to whether the plaintiff has right, title and interest and possession over the suit land, the Trial Court opined that the suit land is in continuous possession of the plaintiff and his predecessor in interest and as such the plaintiff has got right, title and interest over the suit land. On the basis of the findings, the Trial Court decreed the suit in favour of the plaintiff declaring the plaintiff's right, title, interest and possession over the Schedule-C land alongwith the decree of correction of records of rights. A permanent injunction was also granted restraining from eviction from the Schedule-C land. The said judgment and decree was passed on 29.06.2001.

6. Thereafter, the record reveals that an execution proceeding was initiated being Title Execution Case No.35/2001. The Executing Court vide an order dated 18.10.2001 issued precept to the judgment debtors as per the decree. Subsequent thereto, on 20.03.2002, a petition was filed by the judgment debtors stating inter alia that the concerned authority in the meantime have been directed for correction of the records as per the precept issued in the case. It was therefore submitted that the Title Execution Case No.35/2001 be closed on satisfaction of the decree. To the said Petition, a communication issued by the Additional Deputy Commissioner, Dhubri was enclosed dated 20.03.2002 wherein the Additional Deputy Commissioner had directed the Assistant

Settlement Officer, Golakganj Circle, Golakganj to verify the land Schedule mentioned in the decree in Title Suit No.331/1995 and report about the actual position of the said land. It was further mentioned that if some correction is needed as per the decree, to effect the same and report back immediately.

7. Thereupon, the Executing Court vide an order dated 03.05.2002 had taken up the Petition dated 20.03.2002. Taking into account the stand taken by the judgment debtors, the Executing Court allowed the prayer and closed the execution proceedings on satisfaction of the decree.

8. The record further shows that on 09.05.2002 a petition was filed seeking review of the order dated 03.05.2002 and for restoration of the execution proceedings. The ground assigned in the said petition was that in the notice issued addressed to the District Collector, it was mentioned that the report of compliance of the contents of the decree be reported to the Executing Court which have not been sent to the Court and if the report of compliance is not sent, then the purpose of the execution case will not be served and as such the execution be restored to the file till the receipt of the compliance report. The Executing Court taking into consideration the said petition restored the said execution proceedings to the file and fixed 28.05.2002 for compliance report.

9. The record further shows from the order sheet of the Execution proceedings produced before this Court that on 20.08.2002, the decree holder had filed a Petition No.988 under Order XXXIX Rule 2A read with Section 151 of the CPC and Section 12 of the Contempt of Court Act, 1971 praying for drawal of contempt proceedings against the judgment debtors. Upon the filing of the said application seeking drawal of contempt proceedings, the Executing Court kept the execution proceedings in abeyance till the disposal of the contempt proceedings. The order sheet further shows that thereafter on 21.08.2009, after

a gap of almost 7 years, a Petition No.200/09 was filed by the decree holder praying for drawal of contempt proceedings for willful and deliberate disobedience of the Court's order. However, the Executing Court did not pass an order taking into account that the matter was sub-judice. The execution proceedings then continued to be pending as would be apparent from the certified copy of the order sheet produced by the learned counsel for the Petitioner.

10. From the said certified copy, it appears that on 19.12.2012 a letter bearing No.DRS 45/2009/350 dated 18.12.2012, was received by the Executing Court from ADC, Dhubri alongwith a copy of draft Chitha. However, as the Presiding Officer was on leave, the case was fixed on 10.01.2013 for put up. Vide an order dated 10.01.2013, the Executing Court after taking into consideration the report included in the Communication dated DRS.45/2019/350 dated 18.12.2012 from the ADC, Dhubri came to an opinion that the correction of the record in respect to the land in Schedule-C was not complied with in terms with the decree and as such a precept was issued to the concerned authority to comply with the decree together with the Amin report. Further to that, the A.S.O./the CO was directed to comply with the decree of the case and report the same and fixed 11.02.2013 for report. At this stage, if this Court takes into consideration, the order sheet of the execution proceedings, it would be clear that the Additional Deputy Commissioner had due knowledge about the execution proceedings having revived prior to 19.12.2012 in as much as in the said execution proceedings, the letter No.DRS 45/2009/350 dated 18.12.2012 was placed on record.

11. A further perusal of the orders passed in the execution proceedings would show that till 24.04.2013, no report was submitted in compliance to the order

dated 10.01.2013 however, on 23.05.2013 a report bearing No.DRS 10/2013/16 dated 23.05.2013 was received from the ADC, Dhubri and the Executing Court fixed 01.06.2013 for hearing on the report. The record further reveals that on 31.08.2013, written objection was filed against the report dated 23.05.2013 and 19.09.2013 was fixed for hearing. Thereafter, on 07.01.2014 another precept was issued for correction of the record as per the decree and the Executing Court fixed 17.02.2014 for report. Thereafter, it further appears that on 30.04.2014, another letter No.DRS 10/2013/24 dated 12.06.2014 was received from the ADC, Dhubri regarding the anomalies of the decreetal land and 06.08.2014 was the date fixed for hearing on the said report. On 01.09.2014, the Executing Court passed an order wherein it was observed that the judgment debtor if aggrieved by the decree could have raised the matter in appeal, but instead of doing that, they are repeatedly refusing to execute the decree and have violated the orders of the Court. It was further observed that the judgment debtors are not the Appellate Authority to question the validity of the decree rather it is bound to follow the decree and the judgment debtor have also taken several opportunities to delay the execution thereby denying the fruits of the decree to the decree holder. Under such circumstances, the Executing Court deemed it fit to draw up contempt proceedings against the judgment debtors for violating the orders of the Court and accordingly, the case records were directed to be send to this Court for necessary action together with a copy of the order. Thereafter, the record shows that a letter was received from Registrar Judicial of this Court dated 23.12.2014 whereby direction was given to the Executing Court to proceed under the provisions of Order XXI. This aspect of the matter was duly recorded in the order dated 05.01.2015.

12. The Executing Court thereafter, on 02.02.2015 again issued precept to the

judgment debtors. On 07.04.2015, the judgment debtors submitted a letter No.DRS.10/2013/77 dated 07.04.2015 and prayed for time for submitting compliance report for which the Executing Court vide an order dated 07.04.2015, fixed 18.04.2015 for report. Thereafter, vide an order dated 29.07.2015, the Executing Court after hearing the learned counsel for the decree holder issued Show Cause Notice to the judgment debtors as per the order dated 28.04.2015 and fixed 07.09.2015 for report. On 12.10.2015, a report was received by the Executing Court from SDO sadar, Dhubri and the Court fixed 16.11.2015 for hearing on the said report. On 09.12.2015, the Executing Court took into consideration the report which was submitted wherein it was inter alia mentioned that the Schedule-C land measuring 2 Kathas 8 Lechas, Dag No.579/844 (old), 660 (new) is not found in the land records. The Executing Court further took into consideration that in the report dated 18.12.2012 submitted by the ADC, Dhubri, it was mentioned that the decreetal land is recorded in the name of the father of the decree holder. Taking into consideration that both the two reports were contradictory to each other, the Executing Court issued notice to the A.S.O. Golakganj to appear personally with relevant necessary documents, records to clarify their stand and fixed 19.01.2016 for appearance/records. On 19.01.2016, the learned Additional Government Pleader sought for time for report and appearance and thereby the Executing Court fixed 23.02.2016 for necessary order.

13. The order sheet further transpires that in spite of the said orders being passed by the Executing Court, no report was submitted nor the Assistant Settlement Officer, Golakganj Circle appeared. It was only on 06.01.2017 after a lapse of almost one year that the A.S.O. Golakganj Circle appeared and as both sides verbally sought for a date, the next date was fixed on 30.01.2017 for

appearance/necessary order. However, on 30.01.2017, the A.S.O. Golakganj Circle did not appear in spite of having knowledge that the case was fixed on 30.01.2017. As such the Executing Court issued notice to the A.S.O. Golakganj Circle to show cause as to why legal action shall not be taken against him and fixed 03.03.2017 for appearance/necessary order. On 03.03.2017, A.S.O. Golakganj Circle appeared personally and filed reply to the show cause which was duly accepted by the Executing Court. Further to that another report was submitted by the A.S.O. Golakganj. The Executing Court fixed 08.03.2017 for hearing on the report. The decree holder filed their written objection against the report on 08.03.2017 and the Executing Court after hearing both the parties, fixed 14.03.2017 for orders.

14. The order was passed on 17.04.2017 wherein the Executing Court held inter alia that the State had undoubtedly failed to perform the statutory duty imposed upon it by law and before taking any stringent action, the Executing Court was of the opinion to afford another chance to the judgment debtor to comply with the decree and as such directed the Deputy Commissioner, Dhubri to correct the land records through its settlement wings in respect to the suit land in the name of the decree holder in terms with the precept issued by the Executing Court in the execution case arising out of the decree passed in Title Suit No.331/95 within a period of one month from the date of receipt of the said order. Further to that, a copy of the said order was directed to be sent to the Deputy Commissioner, Dhubri and the A.S.O. concerned for information and compliance. A fresh precept was again issued in terms with the decree fixing 17.05.2017 for report. On 17.05.2017, the A.S.O. Golakganj Revenue Circle appeared with a Government pleader stating inter alia that there was no intentional laches on their part to execute the decree. It was submitted that the

land of Dag No.575, 576, 577 and 578 on the North of the decreetal land and land measuring 2 Kathas 8 Lechas under possession of the Petitioners of RSA No.175/2014 and the A.S.O. Golakganj Revenue Circle had complied with the directions passed by this Court in RSA No.175/2014. The learned Executing Court after taking into consideration the order passed in RSA No.175/2014 directed the A.S.O. to correct the land records (except the land in Dag No.575) in respect of the suit land/C Schedule land in the name of the decree holder in terms of the precept issued by the Executing Court within a period of one month from the date of receipt of the order and submit compliance report by the next date positively and fixed 06.06.2017 for report.

15. The record further reveals that on 23.06.2017, the Government Pleader filed a Petition No.212 for another date for submitting report of the record correction as concerned department is busy in some other special work. The said petition was rejected and notice was issued to the A.S.O. Golakganj, to appear personally and show cause as to why legal action should not be taken for non-compliance to order of the Court and fixed 03.08.2017 for appearance and to reply to the show cause. Thereafter, the record further shows that on 03.08.2017 and 18.08.2017, time was sought for on behalf of the judgment debtors.

16. It is further relevant to mention that a petition was filed under Section 47 of the Code of Civil Procedure by the judgment debtor to decide all issues in the proceedings.

17. Thereafter, the record shows that the case was transferred from the Court of the Munsiff No.2, at Dhubri. On 24.10.2017, the Executing Court fixed the matter on 07.11.2017 for hearing/necessary order. Thereafter, on 15.11.2017, the A.S.O. Golakganj was directed to personally appear before the Court and to

show cause as to why legal action should not be initiated for defying the orders issued by the Court. The execution proceedings thereafter stagnated primarily on the ground that the judgment debtor sought for time one after another. It was only on 25.06.2018, the Executing Court after taking into consideration that various opportunities were given to the judgment debtors to submit show cause as well as comply with the decree but having not been done so, a Bailable Warrant of arrest of Rs.10,000/- was issued against the A.S.O. Golakganj, fixing 16.07.2018 for report/appearance. Thereafter, on 16.07.2018 and 13.08.2018 nothing substantial happened and on 12.09.2018 the A.S.O. Golakganj was present and submitted a Petition No.262/2018 stating inter alia that a revision application was filed before this Court against the order dated 17.05.2017 and 23.06.2017 and the Bailable Warrant of arrest was issued against the A.S.O. Golakganj. The Executing Court directed the judgment debtor to furnish the stay order passed by this Court on 08.10.2018.

18. In the backdrop of the above, it appears that one CRP(I.O) No.301/2018 was filed. In the said proceedings, it was mentioned that the judgment debtors have preferred an appeal being Title Appeal No.32/2009 before the Court of Civil Judge at Dhubri alongwith the delay condonation application and an application for stay of the execution of the decree. This Court vide an order dated 08.11.2019 directed the First Appellate Court to dispose of the delay condonation application within a period of 60 days after hearing the respondents and till the next 60 days further proceedings in Title Execution Case No.35/2001 pending in the Court of the Munsiff No.1 was stayed. On the basis of the said order, the proceedings i.e. CRP(I.O) No.301/2018 was withdrawn.

19. In the backdrop of the above, it is relevant to take into consideration that the judgment debtors who are the Respondents herein had filed an appeal

being Title Appeal No.32/2019 challenging the judgment and decree dated 29.06.2001 passed in Title Suit No.331/1995. Alongwith the said appeal, an application was filed under Section 5 of the Limitation Act, 1963 read with Section 151 of the CPC for condoning the delay in preferring the appeal against the judgment and decree dated 29.06.2001. It appears from the records that on 04.09.2019, the said application was filed under Section 5 of the Limitation Act, 1963 alongwith the Memo of Appeal.

20. A perusal of the said application under Section 5 of the Limitation Act shows that it was claimed that the judgment and decree passed by the Trial Court dated 29.06.2001 was obtained through fraudulent means and on 20.09.2001, the Title Execution Case was instituted which was registered and numbered as Title Execution Case No.35/2001. It was further mentioned that the State of Assam recorded its appearance in the said Execution Case and filed an application dated 03.05.2002 narrated all the affairs of the facts denying that the Schedule-C land is a part of Schedule-A land and submitted that the record pertaining to the Schedule-A land is standing in the name of the plaintiff's father, nothing more was required to be corrected in the land records. It was further mentioned that the Executing Court after hearing both the parties to the execution proceedings was pleased to disposed of the said matter accordingly on the same day i.e. on 03.05.2002 and the Appellants/Respondents herein had closed the relative file. It was further mentioned that it was only upon the notice of Executing Court on 06.01.2017 wherein the A.S.O. Golakganj was directed to appear the judgment debtors had knowledge of the Execution Proceedings being revived and on 03.03.2017 wherein a reply was filed to the Show Cause, the same was accepted as satisfactory. But vide the order dated 17.04.2017, the Respondent No.2 herein was again ordered to correct the

records of the right as against the Schedule-C land and failure on her part, the Executing Court on 17.05.2017 and 23.06.2017 passed an order of warrant against the A.S.O., Golakganj as a process of execution of the decree obtained in Title Suit No.331/1995. The judgment debtor being aggrieved by the said order had challenged the matter before this Court in CRP(I.O)301/2018 on 10.09.2018 whereby the matter of execution of warrant and other proceedings were stayed by this Court. It was further mentioned that the present Assistant Settlement Officer was confused as how the show cause notice and warrant of arrest was issued despite disposal of execution proceedings vide order dated 03.05.2002 and accordingly on 31.10.2018, while the respondents herein obtained the certified copy of the order dated 09.05.2002 came to learn that the Executing Court without notice and knowledge to the State of Assam reviewed the matter without following any norms and procedure and taking advantage of the previous service of notice served before the date of disposal of the execution proceedings, the decree holder got passed several adverse orders against the State behind their back which follows the subsequent show cause notice and the order of warrant as well.

21. It was further mentioned that had the execution proceedings not been disposed of on 03.05.2002, the Appellant could have definitely preferred an appeal against the fraudulent decree obtained in Title Suit No.331/1995 disposed of on 29.06.2001 by the Civil Court. It was further mentioned that in view of the proceedings in CRP(I.O) No.301/2018 wherein the execution proceeding was stayed and opinion was taken from the learned Advocate General of Assam who opined that an appeal against Title Suit No.331/1995 is required to be filed assigning the reason for inadvertent delay and after the instructions on 30.08.2019 an application for the certified copy of the judgment

and decree dated 29.06.2001 and the same was obtained on 02.09.2019 and thereafter on 03.09.2019, the appeal was preferred. On the basis thereof, the Respondents herein justified that there was a sufficient cause for not preferring the appeal within time and therefore sought for condonation of delay of more than 18 years from the date of passing the decree.

22. To the said application a written objection was filed wherein the Petitioners as Respondents therein objected to the condonation of delay on the ground that the application was filed stating that they had no knowledge of the execution proceeding which was a blatant lie.

23. The Court of the Civil Judge at Dhubri which is the First Appellate Court vide the impugned order dated 30.01.2020 condoned the delay of 18 years. In doing so, the First Appellate Court took into consideration two grounds which were assigned in the condonation application which were that the Title Execution Case was disposed of on 03.05.2002 and the Appellants were not aware of the revival of the Title Execution Case No.35/2001 on 09.05.2002. The second ground which was taken into consideration by the First Appellate Court was that the Government Pleader had advised that the matter would be disposed of in the execution case because the decree was in-executable and the Government Pleader has not advised the Appellants to prefer any appeal and as such the ground of the Appellants were that due to lack of proper legal advice, the Appellants could not prepare the appeal in time.

24. The First Appellate Court opined in the impugned order dated 30.01.2020 as regards the first ground stating inter alia that the execution case was revived without notice being served on the Appellants or not is a matter relating to procedural irregularity and natural justice requires hearing the both sides. As regards the second reason pertaining to not getting legal advice, the Court

below was of the opinion that if the decree is executable in true sense and if the plaintiffs have obtained the decree in respect of Government land the long passing of time cannot/should not be a factor/bar to look into the correctness of the decree. On the basis of the said opinion, the Court below did not find any negligence on the part of the Appellants for condonation of inordinate delay. Accordingly, the delay was condoned by allowing the said application under Section 5 of the Limitation Act. It is against the said order dated 30.01.2020 that the present application has been filed under Section 115 read with Section 151 of the Code of Civil Procedure challenging the said order.

25. I have heard the learned counsels for the parties and given my anxious consideration to the matter. For deciding as to whether there was sufficient cause for condoning the delay of more than 18 years in filing the appeal, it would be relevant to take note of that the Law of Limitation is founded on public policy. The Limitation Act, 1963 was not enacted with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the Legislature. To put it differently, the Law of Limitation prescribes a period within which the legal remedy can be availed for redress of the legal injury. At the same time, the Courts are also bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated period.

26. The expression "Sufficient Cause" employed in Section 5 of the Limitation Act, 1963 is elastic enough to enable the Courts to apply the law in a meaningful manner which serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the application for condonation of delay, but it is well settled that adoption of liberal approach in condoning the delay of

a short duration and stricter approach where the delay is in-ordinate ought to be adopted. In the judgment of the Supreme Court in the case of ***Basawaraj Vs. Land Acquisition Officer*** *reported in* ***(2013) 14 SCC 81***, the Supreme Court observed that sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "Sufficient" is "Adequate" or "Enough" inasmuch as may be necessary to answer the purpose intended. Therefore, the word "Sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in the case, duly examined from the view point of reasonable standard of a cautious man. Therefore the term "Sufficient Cause" means that the party should not have acted in the negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of the case or it cannot be alleged that the party has "not acted diligently" or "remained inactive".

27. It was further observed that facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The Applicant must satisfy the Court that he was prevented by any sufficient cause from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The Court has to examined whether the mistake is bona fide or a merely a device to cover an ulterior purpose.

28. The Supreme Court in the case of ***Arjun Singh Vs. Mohindra Kumar*** *reported in* ***AIR 1964 SC 993*** explained the difference between "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a "good cause" and vice versa. However, if any difference exist, it can only be that the

requirement of a good cause is complied with on lesser decree that of a sufficient cause. The Supreme Court in the case of ***Basawaraj (supra)*** at paragraph No.12 to 15 summarized scope of sufficient cause and the manner in which the Court should exercise the jurisdiction. The said paragraphs are quoted hereinbelow.

> ***12.*** *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*
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> ***13.*** *The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:*
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> "*605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."*
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> *An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510] , Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)*
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> ***14.*** *In P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992*

SCC (Cri) 93 : AIR 1992 SC 1701] .

15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.*

29. From the above paragraphs, it is very pertinent to note that in Paragraph No.15, the Supreme Court observed that in case a party is found to be negligent or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remain inactive, there cannot be a justified ground to condone the delay. It was further observed that no Court would be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application for condonation of delay is to be decided only within the parameters laid down by the Supreme Court in regard to the condonation of delay. It is most pertinent to take note of the observations of the Supreme Court made to the effect that in case there was no sufficient cause to prevent a litigant to approach the Court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the Legislature.

30. It is also relevant to take note of another judgment of Supreme Court more particularly taking into account that the appeal was preferred by the

Government. The said judgment was rendered in the case of ***Post Master General Vs. Living Media (India) Ltd.*** *reported in* ***(2012) 3 SCC 563*** wherein the Supreme Court at paragraph No.27 to 29 observed that the Law of Limitation undoubtedly binds everybody including the Government. It was further observed that the Government Departments are under special obligation to ensure that they perform their duties with diligence and commitment and condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. Paragraph No.27 to 29 being relevant is quoted hereinbelow.

> ***27.*** *It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*
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> ***28.*** *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.*
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> ***29.*** *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be*

swirled for the benefit of a few.

31. The said judgment of the Supreme Court in ***Post Master General (Supra)*** has been followed in various other judgments of the Supreme Court i.e. in the case of ***State of Rajasthan Vs. Balkrishna Mathur*** *reported in* ***(2014) 1 SCC 592***; ***State of UP Vs. Amarnath Yadav*** *reported in* ***(2014) 2 SCC 422***; ***State of T.N. Vs. N. Suresh Ranjan*** *reported in* ***(2014) 11 SCC 709*** and ***State of M.P. Vs. Bherulal*** *reported in* ***(2020) 10 SCC 654***.

32. In the light of the above, it is therefore relevant to take into consideration as to whether the Respondents herein have offered any plausible/tangible explanation for the long delay of more than 18½ years in filing the appeal and whether the said First Appellate Court was justified in condoning the delay.

33. From a perusal of the said application for condonation of delay as was observed by the learned Court below, there were primarily two grounds. First, is the ground that the execution proceedings i.e. Title Execution Case No.35/2021 was disposed of on 03.05.2002 and thereafter was revived on 09.05.2002 without notice and as such the Respondents herein had no knowledge about the said proceedings. Secondly, the blame has been put on the Government Pleader that there was no legal advice to the effect that they should file an appeal against the judgment and decree dated 29.06.2001.

34. Let this Court take into consideration the first ground. The question of revival of the execution proceedings without notice to the Respondents/judgment debtor is not a relevant factor for the purpose of condonationof delay. It would have been a relevant factor if after 03.05.2002, the Respondents/judgment debtor had no knowledge about the execution proceedings and were under the impression that the Title Execution application was dropped. As already stated hereinabove, the order dated 03.05.2002 was

passed at the behest of the judgment debtor who filed the petition on 02.03.2002 enclosing therewith a copy of communication issued by the Additional Deputy Commissioner, Dhubri to the Assistant Settlement Officer, Dhubri. A perusal of the petition dated 20.03.2002 categorically stated that directions have been issued for correction of the records as per the precept issued by the Court and under such circumstances, the judgment debtors sought for an order for closing the Title Execution Case on satisfaction of the decree. On the basis of the said petition dated 20.03.2002 as well as the communication dated 20.03.2002, the Executing Court closed the execution proceedings on satisfaction of the decree. The statements made in the application for condonation is completely contrary to the records as misleading statements have been made.

35. Thereafter, vide an order dated 09.05.2002, the said execution proceedings was revived. The legality or validity of the order dated 09.05.2002 is not the subject matter of the condonation application. The aspect which ought to have been taken into consideration by the First Appellate Court while taking up the application for condonation of delay as to whether after 09.05.2002 the judgment debtor has knowledge about the execution proceedings. As already noted hereinabove that on 19.12.2012, the Additional Deputy Commissioner who was one of the judgment debtors has submitted a communication dated DRS.45/2009/350 dated 18.12.2012 alongwith the copy of the Draft Chitha. Therefore, the judgment debtor duly had notice that the proceedings in Title Execution Case No.35/2001 have been continuing and in pursuance to that the said report was submitted.

36. The record further shows that on 10.01.2013 a precept was again issued to the concerned authority to comply with the decree together with the Ameen

Report, thereby fixing 11.02.2013 for report. On 23.05.2013 another report was submitted by the judgment debtors. The record further shows that on each and every occasion, the Government Pleader had duly represented the judgment debtors from time to time. On 30.06.2014, the judgment debtor again submitted a communication No.DRS.10/2013/24 dated 12.06.2014 regarding anomalies of the decreetal land. On 01.09.2014 contempt proceedings were initiated against the judgment debtor. On 02.02.2015 again another precept was issued by the Executing Court. On 07.05.2015 the judgment debtor again submitted a report bearing No.DRS.10/2013/77 dated 07.04.2015 whereby time was sought for submitting the compliance report. On 26.05.2015 the judgment debtor again submitted a report. Vide an order dated 09.02.2015, the Executing Court after hearing both the sides issued notice to the judgment debtor/Respondent No.2 to appear personally with necessary documents, records to clarify their stand.

37. On 06.01.2017, the A.S.O. Golakganj Circle appeared before the Court and the Executing Court after hearing both the sides fixed the matter on 30.01.2017 for appearance/necessary order. On 30.01.2017, the A.S.O. Golakganj Circle who is the judgment debtor No.2 did not appear for which notice was issued to show cause as to why legal action shall not be taken against the A.S.O. concerned for non appearance. On 03.03.2017, the A.S.O. Golakganj, personally appeared and filed reply to the show cause as to why legal action should not be taken against him for his non-appearance on 30.01.2017 and the Executing Court being satisfied with the said show cause, accepted the same. It further shows that the Judgment Debtor No.2 also submitted a report. At this stage, if this takes into consideration the application filed for condonation of delay, it would be seen that the said application is completely misleading inasmuch as at

Paragraph No.7, it has been stated that upon the notice of the Executing Court, the Respondent No.2 on 06.01.2017 caused her appearance and on 03.03.2017, filed reply of the show cause which was accepted satisfactory. However, the order dated 17.07.2017 was again passed directing the Respondent No.2 to correct the record of the rights as against the Schedule-C land and failure on her part the Executing Court on 17.05.2017 and 23.06.2017 passed an order of warrant against the A.S.O. Golakganj. This on the face of it amounts to misleading the Court as half truth have been stated without mentioning that on 06.01.2017 the A.S.O. Golakganj was again directed to appear on 30.01.2017 and on the very date as the A.S.O. Golakganj knowing fully well that the case was fixed did not appear, the show cause notice was issued as to why legal action should not be taken against the A.S.O. concerned. The act of the Respondents therefore, clearly smacks of mala fide with a deliberate intention to mislead the Court.

38. At this stage, it is also relevant herein to mention that in the order dated 01.09.2014, the Executing Court categorically observed that if the judgment debtors were aggrieved by the decree they could have raised the matter in appeal but instead of doing that they were repeatedly refusing to execute the decree and violated the orders of the Court. It would have been reasonably expected from the order dated 01.09.2014 that the judgment debtors had due knowledge that it was necessary for them to file an appeal or for that matter take any action for preferring an appeal. This leads this Court to take into consideration the second ground that there was no proper legal advice being given by the Government Pleader for preferring an appeal. Taking into consideration the order dated 01.09.2014 and the continuance of the execution proceedings and the various orders being passed from time to time including

the order dated 17.04.2017, 17.05.2017, 23.06.2017 etc would clearly go to show that even in the orders passed by the Executing Court it was duly reflected that the only option left to the Appellants was to either prefer an appeal against the said judgment and decree dated 29.06.2001 or to comply with the directions of the Executing Court. Mere putting the blame on the Government Pleader for not giving the proper legal advice in spite of the orders being passed by Executing Court and further not showing any grounds excepts stating that the Advocate General in the year 2019 had asked the judgment debtors to prefer an appeal and on the basis of which the appeal was filed on 03.09.2019. In the opinion of this Court, the grounds assigned for not preferring the appeal cannot said to be a justifiable explanation to come within the ambit of a sufficient cause. More so, this Court is of the opinion that the Respondents herein were negligent and the delay was caused on account of dilatory tactics, want of bona fides and their deliberate inaction. Further to that the explanation given is completely contrary to the records as has been observed in detail hereinabove.

39. Now let this Court take into consideration how the First Appellate Court took up the said aspect as regards improper advice of the Government Pleader. The First Appellate Court instead of deciding the question as to whether the grounds assigned were sufficient cause for condoning the delay observed that if a decree is executable in true sense, and if the plaintiff had obtained the decree in respect of a Government land, the long passing of time cannot/should not be a factor/bar to look into the correctness of the decree. It was further opined that the cause of delay is a harsh reality almost in all cases where the State of Assam is dependent which nobody can simply deny and on the basis thereof, have condoned the delay. This is in the opinion of this Court is completely

against the judgments of the Supreme Court and more particularly the Judgment rendered in the case of ***Post Master General (Supra).***

40. Consequently, this Court sets aside the impugned order dated 30.01.2020 as a corollary, the appeal filed by the Respondents being registered as Title Appeal No.32/2019 pending before the Court of the Civil Judge, Dhubri is dismissed as barred by limitation.

41. In view of the observations and directions, the instant petition stands allowed. However, no costs is imposed.

42. Send the LCR to the Court below.

JUDGE

Comparing Assistant