

IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

Dated: 07TH DECEMBER, 2018

S.B.: HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE.

RSA No. 02 of 2018

- Appellants : 1. Old Rumtek Monastery
Filed through DUTCHI
Represented by Lama Dup Tshering
Dorjee Lopen (Head Lama)
Old Rumtek Monastery
Rumtek, East Sikkim.
2. Lama Dup Tshering
Dorjee Lopen (Head Lama)
S/o Shri Naksuk Bhutia
Old Rumtek Monastery
Rumtek, East Sikkim.
3. Nadhu Lepcha
Gyankhang Lama
S/o late Aden Lepcha
Member, DUTCHI
Old Rumtek Monastery
Rumtek, East Sikkim.
4. Phurba Bhutia
Secretary
S/o Topgay Bhutia
Old Rumtek Monastery
Rumtek, East Sikkim.

Versus

- Respondents : 1. Lama Karma Dorjee
S/o Late Sonam Topden Bhutia
2. Lama Sonam Pintso
S/o T.T. Bhutia,
3. Lama Palden
Lopen of Gangtok, Manilakhang

S/o late Sonam Bhutia
R/o Below Old Rumtek Monastery
P.O. Rumtek, P.S. Ranipool,
East Sikkim.

4. Rinzing Bhutia
S/o late Phurgay Bhutia
P.O. Rumtek, P.S. Ranipool,
East Sikkim.

Performa Respondents 5. Secretary
Ecclesiastical Department
Government of Sikkim
Gangtok, East Sikkim.

6. Karma Samdup Lama
Acting Cheotrimpa
S/o Cheozang Bhutia
Old Rumtek Monastery
Rumtek, East Sikkim.

Appearance:

Mr. B. Sharma, Senior Advocate with Mr. B.N. Sharma,
Advocate for the appellant.

Mr. Jorgay Namka, Mr. Karma Sonam Lhendup, Ms. Panila
Theengh and Ms. Tashi Doma Sherpa, Advocates for
respondents No. 1 and 4.

Ms. Kunzang Choden Lepcha, Advocate for respondents
No. 2 and 3.

Mr. Thinlay Dorjee Bhutia, Government Advocate for
respondent No. 5.

None for respondent No. 6.

ORDER

Chief Justice

This Regular Second Appeal has been filed by the
appellants against the judgment dated 31.03.2018 passed by the

District Judge, Special Division-II, Sikkim at Gangtok in Title Appeal No. 06 of 2017 – Old Rumtek Monastery & Others versus Lama Karma Dorjee & Others , whereby the first appeal of the appellants/ plaintiffs was partly allowed. Along with the appeal, an application for condonation of delay has also been filed.

2. The office has reported that there is three days delay in filing the appeal. The ground taken by the applicants/ appellants is that the applicant/appellant No. 2 remained ill and the doctor advised him to take rest for one week and as such the applicants/appellants could not file the appeal on the last day i.e. 09.07.2018. The appeal was presented on 11.07.2018 at 04.00 pm and resubmitted on 07.08.2018 at 04.00 pm. The matter was heard on 16.08.2018 and notice was issued to the respondents on condonation of delay application.

3. The respondents appeared and filed objection against the said condonation of delay application. Mr. Jorgay Namka, the learned counsel for the respondents submitted that the Registry has wrongly calculated the delay as three days in filing the memo of appeal. He submitted that in fact there is forty two days delay in filing the memo of appeal. Learned counsel for the respondents submitted that in view of the judgment passed by this Court in the matter of *Tara Kumar Pradhan versus Yuba Kr. Pradhan (IA No. 01 of 2016 in RFA No. 16 of 2016)*, the date of filing will be the date when petition is placed before

the Registry, after curing all the defects. In *Tara Kumar Pradhan* (supra) the coordinate bench of this Court has held as follows: -

“(8) It has been argued that the RFA was initially filed within the period of limitation, i.e. 62, but the defects unearthed by the Registry led to the delay. This, I am afraid is no ground, as an application or RFA cannot be deemed to be filed until all defects are cured. The date of filing will be the date when the petition is placed before the Registry sans defects and not prior to that.”

4. While hearing the objection raised by the learned counsel for the respondents, this Court directed the Registry to submit a detailed report in the present matter. The Registry submitted its report in the following manner:

“ RSA No. 2 of 2018
Old Rumtek Monastery & Ors.
Vs.
Lama Karma Dorjee & Ors.

Report of the Stamp Reporter in terms of the order dated 26/11/2018 passed in the above cited Appeal.

The appeal was filed on 11/7/2018. In the certified copy of the impugned judgment, date of the application for certified copy is mentioned as 31/3/2018, and the date when the certified copy was made ready is mentioned as 9/4/2018. Applying the formula prescribed by Hon’ble the then Chief Justice Shri N.K. Jain for computation of delay, number of days delayed has been calculated in the following manner:

1. Date of the impugned judgment, i.e. 31.03.2018
2. Date of application for certified copy: 31.3.2018
3. Date when certified copy was made ready: 09.04.2018
4. Date of filing the appeal: 11.07.2018
5. Limitation period: 90 days
6. Time required for obtaining certified copy: 9 days
7. Limitation period commenced from: 02.04.2018
7. Total number of days delayed in filing the appeal, i.e. from 01.04.2018 to 11.07.2018: 102 days
8. Total number of days delayed – limitation period, i.e. 102-90=12 days
9. Subtracting (*sic. 'subtracting'*) further the period of 9 days as time requisite for obtaining certified copy=12-9=3 days.
10. Therefore, the total number of days delayed in filing the appeal = 3 days.

Sd/-
27/11/2018
Stamp Reporter”

5. Considered the submissions of learned counsel for the parties.

6. Sikkim High Court (Practice and Procedure) Rules 2011 (hereinafter referred to as "P.P. Rules") provides procedure regarding Judicial Business. Rule 3 of the P.P. Rules provides that all Petitions/ Appeals/Applications/Counter/Objections etc. to be filed in the High Court shall be filed at the Filing Counter on every day which is not a Court holiday. Any Advocate/Petitioner who files Petitions/Appels/Applications/Counter/ Objections etc. shall check the Notice Board of the High Court on the next day of filing, to ascertain if any defects were detected. The defect/defects so detected shall be rectified by the advocate/petitioner and the petition/application shall be resubmitted as per Rule 7 of the P.P. Rules at the Filing Counter. Rule 13 of the P.P. Rules provides that the date of presentation to the Registrar or Deputy Registrar or such other officer as provided under the rules shall be deemed to be the date of presentation for the purpose of limitation. Rule 7 of the P.P. Rules further provides that where the memorandum of appeal or any petition or application is not drawn up in the manner prescribed in the P.P. Rules or in the Code of Civil Procedure, 1908 the Registrar may allow the same to be amended within a time not exceeding ten days at a time and forty days in the aggregate to be fixed by him. Where the party fails to take any step for removal of the defects within the time fixed for the same, the Registrar may for reason to be recorded in writing, decline to register the document.

7. From the perusal of the paper-book, I find that the present appeal was filed on 11.07.2018 at 04.00 pm. The filing clerk made endorsement about the date and time of filing of the appeal and application for condonation of delay i.e. on 11.07.2018 at 04.00 pm. It is also written by the filing clerk that the appeal and application for condonation of delay was resubmitted on 07.08.2018 at 04.00 pm.

8. Once the petition/appeal is filed in the Registry of the High Court and the Registry put its endorsement about the filing of appeal/petition, then it becomes the record of the Registry. The petitions/appeals/documents once filed in the Registry cannot be permitted to be returned to the party. Handing over a petition/appeal/document to the counsel for the party for removing defects does not mean that the same is returned permanently. In fact, same is given temporarily to the counsel for the party to cure the defects in the office itself. The concerned party/advocate has to remove or cure the defects within the time provided in the P.P. Rules and for that purpose necessary application can be filed in the Registry or necessary court fee etc. be supplied in the Registry but petition/appeal once filed in the Registry cannot be given back to the party/advocate. In the present case, appeal was filed on 11.07.2018 and the Registry rightly calculated the limitation till that date.

9. In my view, the date when the petition/appeal/ application is filed in the Registry and endorsement is made by the Registry about

filing of the case, in that event, that particular date shall be taken as the crucial date for calculating the limitation. With due respect, I am not in agreement with the view taken by the Hon'ble Judge in the matter of *Tara Kumar Pradhan's* case.

10. Therefore, I am of the view that the matter is fit to be referred to a larger bench for giving its opinion on the following question:

“Whether the date of filing of the appeal in the Registry of the High Court is the crucial date for the calculation of limitation or the date when the defects are cured and appeal is resubmitted in the Registry?”

11. Let the matter be placed before the Chief Justice on administrative side for passing appropriate order.

Chief Justice
07.12.2018

Index: Yes.
Internet: Yes.
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