

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**CRP (C.R.P. ART. 227) No. 40 of 2014**

Longjam Bijoy Singh, aged about 78 years, s/o (L) L. Amujao Sngi, of Keishamthong Elangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur (deceased) **by his L.R.s:**

- (i) Shrimati Longjam (O) Thoibi Devi, aged about 70 years, w/o (L) L. Bijoy Singh;
- (ii) Shri Longjam Montosh Singh, aged about 48 years, S/o (L) L. Bijoy Singh;
- (iii) Miss Longjam Sunita Devi, aged about 46 years, d/o (L) L. Bijoy Singh;
- (iv) Shri Longjam Gogi Singh, aged about 44 years, s/o (L) L. Bijoy Singh;
- (v) Miss Longjam Heniya Devi, aged about 42 years, d/o (L) L. Bijoy Singh;
- All of them of Keishamthong Elangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur.

**..... *Petitioners***

- Versus -

1. Shri Keisham Irabot Singh, aged about unknown, s/o unknown of at present residing at A.O.C. Point, near Kekrupat Area, Imphal, Manipur Opposite to Kekrupat, Imphal.
2. Smt. Lairikyengbam (N) Tourangbam (O) Babikarani @ Veda Devi, aged about 38 years, w/o Tourangbam Debeshore Singh of Uriopok Sorobon Thingel, P.O. & P.S. Imphal West District, Manipur.

**....*Defendants/Respondents***

**With  
CRP (C.R.P. ART. 227) No. 48 of 2015**

1. Longjam Ibohal Singh, aged about 51 years, s/o L. Robindro Singh of Keishamthong Elangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur.
2. Longjam Brojendro Singh, aged about 50 years, s/o Late L. Tombichou Singh of Keishamthong Elangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur

**..... *Petitioners***

- Versus -

1. Shri Keisham Irabot Singh, aged about unknown, s/o unknown of at present residing at A.O.C. Point, near Kekrupat Area, Imphal, Manipur Opposite to Kekrupat, Imphal.
2. Smt. Lairikyengbam (N) Tourangbam (O) Babikarani @ Veda Devi, aged about 38 years, w/o Tourangbam Debeshore Singh of Uriopok Sorobon Thingel, P.O. & P.S. Imphal West District, Manipur.

**....*Defendants/Respondents***

## **B E F O R E**

### **HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR**

For the petitioners in the CRPs : Mr. N. Mahendra, Advocate  
For the respondents : Mr. S. Rajeetchandra, Advocate

**Date of Hearing** : **31.01.2022**  
**Date of Judgment & Order** : **04.02.2022**

## **JUDGMENT AND ORDER**

**[1]** Original Suit No. 24 of 2006, renumbered as Original Suit No. 51 of 2011, on the file of the Ld. Civil Judge (Sr. Division) No.1, Manipur East, was filed on 06.11.2006. This suit was filed by Longjam Bijoy Singh, Longjam Ibohal Singh and Longjam Brojendro Singh against Keisham Irabot Singh and Lairikyengbam (N) Tourangbam (O) Babikarani @ Veda Devi, seeking declaration of their title in relation to the suit schedule homestead land; for cancellation of mutation; and for a permanent injunction restraining the defendants from dispossessing the plaintiffs or otherwise causing injury in relation to the suit schedule land. The suit schedule land is an extent of .0486 hectares in Patta No. 42/490(old)/767(new) in Dag No. 6039 situated at Keishamthong Elangbam Leikai, Imphal.

The written statement was filed by the defendants in the suit on 16.02.2007. The temporary injunction application filed by the plaintiffs in Judl. Misc. Case No. 148 of 2008 was rejected by the Trial Court on 30.06.2008. Issues were framed by the Trial Court on 16.08.2008. Thereafter, no steps seem to have been taken for commencing the trial and the suit itself came to be dismissed on 30.06.2010 for non-prosecution. The restoration petition in Judl. Misc. Case No. 154 of 2010 filed on 29.07.2010 was allowed on payment of

costs, vide order dated 03.03.2011. The suit was again dismissed for default on 08.11.2011 and was once again restored on 31.12.2011 on payment of costs.

**[2]** While so, Longjam Bijoy Singh, the first plaintiff, died on 08.03.2012. His legal representatives, viz., his widow, 2 sons and 2 daughters, filed Judl. Misc. Case No. 73 of 2012 seeking to be brought on record. This application was filed on 20.04.2012. However, it was dismissed on 27.04.2012 for non-appearance. On the same day, the suit was again dismissed for default.

Judl. Misc. Case No. 117 of 2012 was filed on 23.05.2012 for restoration of the suit. This application was dismissed for default on 17.01.2013. Judl. Misc. Case No. 30 of 2013 was filed on 19.01.2013 seeking restoration of Judl. Misc. Case No. 117 of 2012.

As regards the dismissal of the LR application in Judl. Misc. Case No. 73 of 2012, applications in Judl. Misc. Case Nos. 479 and 480 of 2013 were filed by the widow and children of late Longjam Bijoy Singh only on 09.07.2013. By way of Judl. Misc. Case No. 479 of 2013, they sought condonation of the delay on their part in filing a restoration application. Significantly, the number of days delay was not mentioned in the application. Judl. Misc. Case No. 480 of 2013 was filed by them for restoration of the LR application in Judl. Misc. Case No. 73 of 2012.

**[3]** On 13.06.2014, the Ld. Civil Judge (Senior Division) No. I, Manipur East, dismissed all three miscellaneous cases. The widow and children of late Longjam Bijoy Singh, the first plaintiff, filed CRP No. 40 of 2014 assailing the order dated 13.06.2014 passed in Judl. Misc. Case Nos. 479 and 480 of 2013. Longjam Ibohal Singh and Longjam Brojendro Singh, the other two plaintiffs in

the suit, filed CRP No. 48 of 2015 against the order dated 13.06.2014 passed in Judl. Misc. Case No. 30 of 2013.

**[4]** Heard Mr. N. Mahendra, learned counsel, appearing for the petitioners in both the CRPs; and Mr. S. Rajeetchandra, learned counsel for the respondents therein.

**[5]** Mr. N. Mahendra, learned counsel, would argue that the Trial Court ought not to have been hyper-technical in its approach while dealing with the subject applications. He would assert that procedure is only the hand-maid of justice and not its mistress and, therefore, the Trial Court should have been more lenient while considering the miscellaneous cases. He would further assert that the failure of the learned counsel to be present on time is a mistake attributable to him and that the parties should not be punished for such a mistake on the part of their counsel. He would place reliance on case law in support of his contentions.

**In *G.P. Srivastava Vs. R.K. Raizada and others [(2000) 3***

**SCC 54]**, the Supreme Court considered the scope of 'sufficient cause' in the context of Order 9 Rule 13 CPC. It was held that unless sufficient cause is shown for non-appearance of the defendant on the date of hearing, the Court would have no power to set aside an *ex parte* decree and that the words: 'was prevented by any sufficient cause from appearing' must be liberally construed to enable the Court to do complete justice between the parties, particularly when no negligence or inaction is imputable to the erring party. The Supreme Court further held that 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding *ex parte* and it cannot be stretched to rely upon other circumstances anterior in time.

In **Smt. Lachi Tewari and others Vs. Director of Land Records and others [1984 (Supp) SCC 431]**, the Supreme Court relied on its earlier observations in **Rafiq and another Vs. Munshilal and another [(1981) 2 SCC 788]** to the effect that, after engaging a lawyer, the party may remain supremely confident that the lawyer would look after his interest and the personal appearance of the party would not only be not required but would hardly be useful. This principle was applied in **Ashok Ravji Vadodriya Vs. Municipal Corporation, Greater Bombay [AIR 2004 Bombay 8]**.

In **Lala Mata Din Vs. A. Narayanan [(1969) 2 SCC 770]**, the Supreme Court affirmed that mistake of counsel may, in certain circumstances, be taken into account to condone delay, although there is no general proposition that mistake of counsel by itself is always a sufficient ground.

In **N. Balaji Vs. Virendra Singh and others [AIR 2005 SC 1638 = (2004) 8 SCC 312]**, the Supreme Court reiterated that laws of procedure are meant to effectively regulate, assist and aid the object of substantial and real justice and not to foreclose an adjudication on the merits of substantial rights of citizens under personal, property, and other laws. The earlier Constitution Bench judgment in **Sardar Amarjit Singh Kalra (Dead) by LRs and others Vs. Pramod Gupta (Dead) by LRs. and others [(2003) 3 SCC 272]** was relied upon to hold that procedure would not be used to discourage substantial and effective justice but would be so construed as to advance the cause of justice. Similar was the *ratio* laid down in **Bhagwan Swaroop and others Vs. Mool Chand and others [AIR 1983 SC 355]**.

In **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107]**, the Supreme Court observed

that the power to condone delay has been conferred to do substantial justice to the parties by disposing of matters on merit and the expression 'sufficient cause' employed by the legislature was adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice.

**[6]** The above being the legal position, it has to be seen whether the applicants in the miscellaneous cases before the Trial Court were able to show their *bonafides* and establish 'sufficient cause' by demonstrating that the mistake of their counsel, if any, should to be condoned. Though Mr. N. Mahendra, learned counsel, would assert that the failure to appear on the relevant day alone has to be taken into consideration, this Court would be justified in examining the conduct of the party all through to ascertain whether 'the failure to appear' was a chronic phenomenon and not a stray instance. As pointed out by the Supreme Court, the effort of the Court should be to see that justice is done, which would include justice to both the parties to the litigation. That being so, a defendant cannot be penalized and made to suffer the rigours of litigation over decades, despite the plaintiff being lax and careless in prosecuting the case.

**[7]** In the case on hand, it may be seen that the suit which was filed as long back as in the year 2006 has remained practically frozen since then and the trial has not even commenced till now. It was dismissed for non-prosecution on two occasions earlier but was restored on payment of costs. In effect, this is the third time that the suit came to be dismissed for default.

**[8]** That apart, there are any number of technical lapses and defects in the miscellaneous cases that reflect poorly upon the *bonafides* of the applicants and their learned counsel. Having suffered the earlier mistakes of the very same counsel without protest or remedial action, it is not open to the

applicants to blithely blame their counsel time and again and pray that they should not be penalized for his mistakes.

It may be noted that Longjam Bijoy Singh, the first plaintiff in the suit, died on 08.03.2012 and the LR application filed in Judl. Misc. Case No. 73 of 2012 was dismissed on 27.04.2012. On the very same day, the suit itself came to be dismissed for non-prosecution. Despite the same, Judl. Misc. Case No. 117 of 2012 was filed in May, 2012, showing Longjam Bijoy Singh along with the other two plaintiffs as the applicants therein. In effect, this application was filed on behalf of a dead person. The said application was dismissed for default on 17.01.2013 and again, Judl. Misc. Case No. 30 of 2013 was filed for its restoration on 19.01.2013 showing Longjam Bijoy Singh and the other two plaintiffs as the applicants therein. Therefore, this application was also filed on behalf of a dead person.

The only reason cited therein by the learned counsel for the applicants for restoration of Judl. Misc. Case No. 117 of 2012 was that the said application was listed on 17.01.2013 and he came to Court around 12:00 noon and upon checking the record he found that the restoration application was dismissed for default. No reason was offered by the learned counsel as to why he failed to come to Court on time. This aspect was taken note of by the Trial Court in the order dated 13.06.2014 and the miscellaneous case was rejected. It is not open to a party or its learned counsel to take it for granted that an application of this nature would be dealt with leniently and not even offer an explanation for the failure on their part to appear. The learned counsel for the applicants would have been well aware as to when the Court would commence its work and he necessarily had to explain as to why he failed to appear before

the Court till around 12:00 noon on 17.01.2013. No effort whatsoever was made by the learned counsel to at least offer an explanation.

That apart, as already pointed out, the application itself was liable to be rejected as it was filed in the name of a dead person. Therefore, no grounds are made out to interfere with the order dated 13.06.2014 passed by the Trial Court dismissing Judl. Misc. Case No. 30 of 2013.

**[9]** In so far as Judl. Misc. Case Nos. 479 and 480 are concerned, it may be noted that a single CRP has been filed against the two separate orders passed in these miscellaneous cases. The very institution of this CRP is therefore defective. That apart, these applications also were defective on several technical grounds. The LR application filed by the widow and children of late Longjam Bijoy Singh, viz., Judl. Misc. Case No. 73 of 2012, was dismissed on 27.04.2012 for non-appearance. That being so, they could not have styled themselves as the LRs of late Lonjam Bijoy Singh in the applications filed thereafter. However, they chose to file both the miscellaneous cases describing themselves as such. Even this CRP was filed by them on the same lines. Further, the learned counsel appearing for them did not even choose to quantify the number of days delay in the filing of the restoration application. This aspect was noted by the Trial Court in its order dated 13.06.2014 in Judl. Misc. Case No. 479 of 2013.

To compound matters, all that the learned counsel stated in the delay condonation application was that the restoration petition could not be filed within the period of limitation due to 'oversight, inadvertence and *bonafide* mistake'. No details were given as to how the claimed 'oversight, inadvertence and *bonafide* mistake' had application. The least that was expected was for the counsel to explain as to what was the *bonafide* mistake. No steps having been

taken by him to show 'sufficient cause' for the delay, no grounds are made out for interference with the order of the Trial Court dismissing the delay condonation application.

In so far as the order in Judl. Misc. Case No. 480 of 2013 is concerned, the Trial Court took note of the fact that the restoration application was filed 15 months after the dismissal of the suit and accordingly rejected it on the ground that the delay had not been condoned.

**[10]** Utter laxity on the part of the surviving plaintiffs in the suit and the widow and children of the deceased first plaintiff in pursing the litigation is therefore manifest. In such circumstances, it is not open to them to casually blame their Advocate and seek restoration of a suit of the year 2006 which has not progressed even a step further, i.e., to the stage of trial.

In the interest of justice and in the interest of the defendants, who are made to put up with the vagaries of the uncaring and casual pursuit of this litigation since over a decade and a half, this Court finds no grounds whatsoever to show further indulgence to the petitioners.

Both the Civil Revision Petitions are utterly devoid of merit and are accordingly dismissed.

There shall be no order as to costs.

**CHIEF JUSTICE**

**FR/NFR**

*Indrajeet*