GAHC030002252026

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

Case No. : CRP/6/2026

Smt. Laldintluangi
W/o Thangmawia (L),
R/o Electric Veng, Aizawl

VERSUS

Sh. Lalhmunsanga
S/o Lalthanpuia (L),
R/o Electric Veng, Aizawl

Advocate for the Petitioner : Mr. C Lalfakzuala

Advocate for the Respondent : Mr. J. Malsawmzuala Vanchhawng

BEFORE

HON'BLE MR JUSTICE MRIDUL KUMAR KALITA
O R D E R

22.09.2026

1. Heard Mr. C. Lalfakzuala, the learned counsel for the petitioner. Also heard Mr. J. Malsawmzuala, learned counsel for the respondent.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 29.07.2025 passed by the court of the learned Civil Judge (Senior Division) Aizawl in CMA No.

687/2025, in connection with Probate Application No. 18/2025, whereby the delay of 3,708 days in filing the connected probate application was condoned by the Trial Court.

3. The facts relevant for consideration of the instant application, in brief, are that the respondent herein, namely, Sh. Lalhmunsanga filed an application under Section 30 of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, for grant of probate of the will dated 17.08.2004, executed by the deceased testatrix, Late Thangseii, who had passed away on 03.05.2010. As there was delay in filing of the probate application, the said application was accompanied with an application for condonation of delay. The said condonation of delay application was registered as CMA No. 687/2025. However, the present petitioner, who is the daughter of the testatrix or any of the legal heirs of the testatrix, were not made party in the said CMA.

4. Mr. C. Lalfakzuala, the learned counsel for the petitioner submits that the testatrix, Late Thangseii was the mother of the present petitioner. Apart from the present petitioner, she had eight other issues including three daughters and five sons. He submit that after the death of her mother, the present petitioner, being the legal heir of her mother, filed an application for grant of heirship certificate before the court of the learned Civil Judge (Senior Division) No. 5, Aizawl on 03.06.2025. Said case was registered as HC No. 632/2025.

5. He submits that after filing of the aforesaid case, the present respondent, without making any of the legal heirs as party, filed the probate case before the Probate Court for grant of probate in respect of the last will of the deceased. The probate application was filed on

27.06.2025.

6. The learned counsel for the petitioner submits that the period of limitation for filing an application for grant of probate under the Mizo Marriage, Divorce and Inheritance of Property Act, 2014 is 5 years from the death of the testator, as provided in section 29(8) of the said Act. However, in the instant case, there was a huge delay of 3,708 days. He submits that the respondent, by playing fraud upon the court, did not intentionally make the present petitioner a party in the condonation of delay application.

7. He further submits that though the present petitioner has now been impleaded as an opposite party in Probate Case No. 18/ 2025, however, he submits that as after the lapse of the period of limitation, a right accrues in favor of the present petitioner to oppose any grant of probate beyond the said period by any court, as such, she ought to have been notified by the probate court before condoning the huge delay of 3,708 days.

8. He further submits that as the petitioner was not heard while condoning the delay in filing the probate application, by the probate court, his only prayer is to set aside the impugned order dated 29.07.2025 and give an opportunity to the petitioner to submit objection before the Trial Court to oppose condonation of delay, as such, he prays for remanding the matter back to the probate court for deciding the question of condonation of delay afresh after hearing the parties.

9. On the other hand, Mr. J. Malsawmzuala, the learned counsel for the respondent has submitted that that there is no infirmity in the order dated

29.07.2025 passed by the probate court condoning the delay of 3,708 days.

10. He submits that since the deceased testatrix has not bequeathed anything to the present petitioner and her name does not find place either as a beneficiary or as an executrix in the will, the probate court was right in condoning the delay. He further submits that the respondent came to know about the will belatedly and as such, immediately after knowing about the existence of the will, he approached the probate court.

11. He submits that the respondent has been named as the executor and the beneficiary in the will by the testatrix. He submits that as the petitioner has already appeared in the pending probate case before the probate court, hence, she would have a fair opportunity to oppose the grant of probate now. He submits that the petitioner has not suffered from any prejudice by the impugned order, whereby the probate court has condoned the delay.

12. He further submits that the main purpose of the probate court is mainly to find out whether the will of which probate is sought is the genuine will of the testatrix or not, and in this regard, the petitioner would have a full opportunity in opposing the said fact before the trial court. He also submits that an application for grant of probate may be made as soon as right to apply accrues. He submits that this right is a continuous right, which can be exercised at any time after the death of the deceased as long as the right to do so survives.

13. He submits that the right to apply would accrue when it becomes necessary to apply, which may not necessarily be within 3 years from the

date of the deceased's death, and in the instant case, he submits as the respondent came to know about the existence of the will much belatedly, hence, there was no delay in filing the probate application before the trial court. In support of his submission, the learned counsel for the respondent has cited a ruling of the Apex Court in the case of ***Sanjay Sharma @ Sanjay Bhardwaj versus Krishnadhan Khaware and others*** (Judgment dated 15.07.2026 passed in Special Leave Petition (C) No. 13473 of 2020). Hence, he submits that this is not a fit case to invoke extraordinary supervisory power of this court under Article 27 of the Constitution to interfere with the impugned order, as such, he prays for dismissing the instant petition.

14. I have considered the submissions made by the learned counsel for both sides and have gone through the material available on record. I have also gone through the ruling cited by the learned counsel for the respondent in support of his submissions.

15. In the instant case, though the original records of the trial court were was requisitioned, however, it appears that the original records have not been received, but the scan copy of the same have been received and this court after considering the same is of the opinion that it would serve the purpose and as such insistence on requisitioning the original record may not be necessary.

16. In the instant case, there is no dispute that in the CMA No. 687/ 2025, which was filed by the present respondent seeking condonation of 3,708 days in filing the connected probate application, the present petitioner was not made party. For that matter, it appears that none of the heirs of the deceased testatrix were made party in the said CMA, which at the outset

appears to be wrong in as much as the respondent is the grandson of the testatrix and was aware about the legal heirs of the testatrix.

17. More so, it appears from the records that the Probate Application No. 18/2025 was filed by the present respondent after filing of the application for heirship certificate by the present petitioner in which the present respondent was also made an opposite party.

18. Though, there no period of limitation is prescribed for filing an application for grant of probate under Indian Succession Act, 1925, however, that is not the case with the Mizo Marriage, Divorce and Inheritance of Property Act, 2014 as it categorically provides in section 29 (8), a period of limitation i.e. five years from the date of the death of the testator for filing an application for probate. The observations made by the Apex Court in case of ***Sanjay Sharma @ Sanjay Bharadwaj (supra)***, which has been cited by the learned counsel for the respondent are applicable only to a case where the provisions of Indian Succession Act, 1925 are applicable. However, as the instant case is governed by the provisions of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, which provides for a specific period of limitation, the observations made by the Apex Court in the aforesaid case are not applicable.

19. In the instant case, after lapse of the prescribed period of limitation i.e. five years from the date of death of the testatrix, a right accrues in favour of the present petitioner to oppose any grant of probate beyond the said period of limitation, as such depriving the present petitioner of an opportunity to oppose the prayer for condonation of delay would be against the principles of natural justice and the said aspect was not taken into consideration by the Trial Court, while passing the impugned order.

The impugned order is, therefore, liable to be set aside.

20. In view of the discussions made and reasons stated in the foregoing paragraphs this court sets aside the impugned order dated 29.07.2025 passed by the court of the District Judge, (Senior Division) No. 3, Aizawl in CMA No. 687/2025. The matter is remanded back to the Trial Court with a direction to give an opportunity to the present petitioner to file objection against the prayer for condonation of the delay made by the respondent and after hearing both sides the Trial Court shall decide the question of condonation of limitation afresh.

21. It is also made clear that the Trial Court shall also notify the other legal heirs of the deceased, Smt. Thangseii in CMA No. 687/2025 before deciding the prayer for condonation of the delay of 3,708 days in preferring the probate application by the present respondent.

22. With the above observation, this application stands allowed.

JUDGE

Comparing Assistant