

GAHC010041152019



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

Case No. : I.A.(Civil)/723/2019

SMTI LILA DEVI
W/O LATE GOBINDRA BAHADUR CHETRY, R/O VILL. 2 NO.
PIPALPUKHURI, UDAIPUR, P.O. 1 NO. PIPALPUKHURI, P.S. LANKA, DIST.
HOJAI, ASSAM, PIN 782442

VERSUS

SMTI MOINA ENGLENGPI AND 5 ORS
D/O SARSING ENLENG, R/O VILL. 2 NO. PIPALPUKHURI, UDAIPUR, P.O. 1
NO. PIPALPUKHURI, P.S. LANKA, DIST. HOJAI, ASSAM, PIN 782442

2:MADAN CHETRY
S/O SMTI. MOINA ENGLENGPI
R/O VILL. 2 NO. PIPALPUKHURI
UDAIPUR
P.O. 1 NO. PIPALPUKHURI
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782442

3:DILIP CHETRY
S/O SMTI. MOINA ENGLENGPI
R/O VILL. 2 NO. PIPALPUKHURI
UDAIPUR
P.O. 1 NO. PIPALPUKHURI
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782442

4:SMTI PRABATI DEVI

D/O SMTI. MOINA ENGLENGPI
R/O VILL. JIRIM BORHOLLY
P.O. HOWAIPUR
P.S. KHERONI
DIST. KARBI ANGLONG
ASSAM
PIN 782440

5:KHARG BAHADUR CHETRY
S/O LATE BISWA BAHADUR CHETRY
R/O VILL. 2 NO. PIPALPUKHURI
UDAIPUR
P.O. 1 NO. PIPALPUKHURI
P.S. LANKA
DIST. HOJAI
ASSAM.
PIN 782442

6:SMTI SARASWATI DEVI
W/O KHARG BAHADUR CHETRY
R/O VILL. 2 NO. PIPALPUKHURI
UDAIPUR
P.O. 1 NO. PIPALPUKHURI
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 78244

Advocate for the Petitioner : MR. U SAIKIA

Advocate for the Respondent : MR. I H BARBHUIYA

Linked Case :

SMTI LILA DEVI

VERSUS

SMTI MOINA ENGLENGPI AND 5 ORS

Advocate for :

Advocate for : appearing for SMTI MOINA ENGLENGPI AND 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

27.02.2023.

Mr. R. K. Nath, learned counsel for the applicant submits that on the death of Gobinda Bahadur Chetry, his debt and liabilities are contested by the present applicant and the respondent Nos. 1, 2, 3 and 4. The respondent Nos. 5 and 6 are the father and mother of the deceased. Therefore, after their death, no substitution application is required.

This Court is also of the view that the suit pertains to the entitlement of debt and liabilities of deceased Gobinda Bahadur Chetry. The applicant herein claims to be the wife of Late Gobinda Bahadur Chetry inasmuch as the respondent No. 1 also claims to be his wife and the respondent Nos. 2, 3 and 4 claims to be daughter and sons of the deceased from the said respondent No. 1. i.e. Smti. Moina Englengpi. Therefore, on the death of respondent Nos. 5 and 6, no further substitution is required as all the legal heirs of deceased are parties to the process.

Accordingly, the names of respondent Nos. 5 and 6 be deleted from the array of parties.

Registry to correct the cause title by deleting the name of respondent Nos. 5 and 6.

This present application is filed under Section 5 of the Indian Limitation Act, 1963 for condonation of delay of 79 days in preferring the connected appeal under Section 384 of the Indian Succession Act, 1925 against the Judgment and Order dated 14.05.2018 passed in Misc. (Succ) Case No. 18/2015, by the learned Additional District & Sessions Judge, Hojai.

The delay of 79 days in preferring the connected appeal has been explained at paragraphs 2 and 3 of the present application. From the pleadings it is seen that the certified copy was delivered on 23.05.2018 and therefore, the last date of filing the appeal was 23.06.2018. As this Court was closed due to summer vacation between 23.06.2018 to 08.07.2018 and the Court reopened on 09.07.2018, applicant could not file the appeal immediately on reopening for the reason that she is having a very poor financial condition, and not getting the pensionary benefits of the deceased husband and living alone with her aged father in law and mother in law without having any means of income and she is also from a remote place. The applicant could contact with the counsel in the later part on the month of September, 2018 and thereafter, this Court was closed due to Puja holidays and the appeal was filed immediately after reopening.

Considered such submissions. The learned counsel for the respondents though have not filed any objection, however, vehemently opposes such condonation of delay arguing that the applicant has failed to explain day to day delay.

Law is well settled that no day to day explanation is necessary, however, what is necessary is that whether sufficient cause has prevented the applicant in approaching a court of law beyond the period of limitation.

The reading of paragraphs 2 and 3, as discussed hereinabove, discloses sufficient cause, which prevented the applicant in approaching this Court. Accordingly, the delay is condoned.

This Interlocutory Application is disposed of.

Registry to register the connected Intest. Case, if it is not found defective and list this matter in the Admission column after one week showing the name of Mr. I. H. Barbhuiya, learned counsel for the respondents in the cause list.

In the meantime, the copy of the appeal memo be furnished to Mr. I. H. Barbhuiya, learned counsel for the respondents.

JUDGE

Comparing Assistant