

GAHC010056462021



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

Case No. : I.A.(Civil)/786/2021

NILU SUTRADHAR AND ANR.
S/O. LATE KALARAM SUTRADHAR

2: KAMALESWAR SUTRADHAR

BOTH ARE R/O VILL. DORAPARA AGIA
P.O. AGIA
P.S. AGIA
DIST. GOALPARA
ASSAM

VERSUS

HARESWAR SUTRADHAR AND 2 ORS.
S/O. LATE NAKARU SUTRADHAR, VILL. DORAPARA (AGIA), P.O. AND P.S.
AGIA, DIST. GOALPARA, ASSAM, PIN- 783120

2:JAGAT SUTRADHAR (DECEASED)
REP. BY HIS LEGAL HEIRS PURNIMA SUTRADHAR (WIFE)
DULAV SUTRADHAR (SON)
DAMBARU SUTRADHAR (SON)
R/O. BARPETA
NEAR SWAHID BEDI
P.O. AND DIST. BONGAIGAON
ASSAM PIN- 783380

3:SMTI DEBOLA BALA SUTRADHAR

W/O LT. GIRISH SUTRADHAR
VILL. DORAPARA
P.O. AGIA
P.S. AGIA
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR. S K GHOSH

Advocate for the Respondent : MR. A ROSHID (R1, R2(A), R2(B), R2(C))

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

18.01.2023

Heard Mr. S. K. Ghosh, the learned counsel for the applicants and Mr. A. Roshid, the learned counsel appearing on behalf of the opposite parties.

This is an application under Section 5 of the Limitation Act for condoning the delay of 1649 days in preferring the application for restoration of the appeal which was dismissed for default vide an order dated 10.08.2015. The ground alleged in the instant application at paragraph No.3 is that this Court dismissed the appeal on 10.08.2015 for non-prosecution. It is relevant herein to take note of that in the affidavit wherein the said paragraph has been verified as true to the knowledge of the applicants. It is alleged that the said engaged counsel did not inform the applicants that the case was dismissed for non-prosecution, and on several occasions, when the applicants enquired about the status of the case, the counsel informed the applicants that the case was admitted and pending. It is further mentioned that in the month of February, 2020, the applicants got notice from this Court along with a copy of the Interlocutory Application filed by the opposite parties in connection with RSA No.85/2016 that the opposite party No.2 in the said case and the appellant No.2 in RSA No.85/2016 had died and they filed substitution petitions. Immediately thereupon, the applicant No.1 came to Guwahati on 22.02.2020 and met

their counsel at Guwahati and at that time also the said counsel never informed about the dismissal of the case rather he asked for hearing fee from the applicants. It has been further alleged that the appellant No.1 came to Guwahati in the month of March, 2020 and handed over the copies of Interlocutory Application and at that point of time, the counsel handed over the brief of the applicants by saying that he may engage any other counsel of his choice as the applicants are unable to pay the necessary hearing fee. Thereafter, the applicants went to Goalpara and on account of the lockdown due to COVID-19, he could not engage any other counsel and it was only on 04.03.2021, the applicants came to Guwahati and contacted the present counsel and after going through the file and after making enquiry from the Court, the present counsel informed the applicants that the case has already been dismissed for default on 10.08.2015, and thereafter, the counsel made further enquiry and came to know that there is another RSA No.85/2016 filed by the opposite parties which was pending. It is under such circumstances there was a delay of 1649 days in preferring the said application for restoring the second appeal which was dismissed for default vide the order dated 10.08.2015.

The opposite parties herein, pursuant to the issuance of notice, have filed the written objection stating inter-alia that the allegation made in the application was against the Advocates. However, the applicants have not taken any legal action against the Advocates. It has been further mentioned that there were four Advocates who were representing the applicants and there was not even a single whisper in the said application whom the applicants had met or had the conversation. It was further stated that the allegations made in the said application are misleading and without

any basis and the Advocates have been put to blame in order to overcome the delay which was caused in filing the I.A.(C) 785/2021, i.e. the application filed for restoration of the appeal.

I have heard the learned counsel for the parties and perused the materials on record. The delay in the instant application is 1649 days and the allegations which have been made are very serious in nature on a misconduct by the lawyer of the applicants. It, however, surprises this Court that in spite of what has been alleged, the applicants has not resorted to take any action against the Advocates concerned. Further to that, the application is vague as there is no mention about the name of the lawyer(s) with whom the applicants had interaction or which lawyer or lawyers had demanded money or who had informed that the Appeal was pending though was dismissed on 10.08.2015. Further, not taking of the action by the applicants upon the said Advocates in spite of such serious allegations being made do not inspire the confidence of this Court as regards the bonafide of the applicants.

Under such circumstances, this Court is of the opinion that the applicants have failed to justify sufficient grounds for condoning the delay of 1649 days.

Consequently, the instant application stands dismissed.

JUDGE