

GAHC010059842023



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

Case No. : I.A.(Civil)/780/2023

SAWAN BHANGRA AND ANR.
S/O LATE NIMIYA BHANGRA @ NEHEMIYA, RESIDENT OF SEPON TEA
ESTATE, STAFF QUARTER, SEPON, DIST SIVASAGAR, ASSAM 785673

2: SMTI PREETY BHANGRA
D/O LATE NIMIYA BHANGRA @ NEHEMIYA
RESIDENT OF SEPON
SANTIBON PATH
PO SEPON
DIST SIVASAGAR
ASSAM 78567

VERSUS

ATUL CHANDRA BARUAH
S/O SRI BIMAL CHANDRA BARUAH,
RESIDENT OF SEPON BAZAR, MOUZA KHALOIGHUGURA, PO SEPON, DIST
SIVASAGAR, ASSAM

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent : MR H BEZBARUA

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

28.06.2023

Heard Mr. B.K. Das, learned counsel for the applicants. Also heard Mr. H. Bezbarua,

learned counsel for the respondents.

2. This application under Order 41 Rule 3A of the Code of Civil Procedure read with Section 5 of the Limitation Act is preferred by the applicants for condonation of delay of 416 days in filing the connected appeal against the judgment and decree dated 08.11.2019, passed by the learned Civil Judge, Sivasagar, in T.S. No.21/2015.

3. Mr. Das, learned counsel for the applicants submits that the connected appeal could not be filed in time as at the time of delivery of judgment and decree on 08.11.2019, the son of the applicant No.1 was suffering from severe illness and in the year 2020 doctor declared his son suffering from 50% locomotor disability and the applicant No.1 became physically and mentally weak and he took sufficient time to take the decision to file appeal against the impugned judgment and decree. Thereafter, he was busy with the treatment of his son till 09.12.2019, and in the meantime, the husband of the applicant No.2 was expired and the applicant No.2 could not speak and listen properly at that time. Thereafter, in the month of March 2020 he discussed with his engaged counsel to file appeal against the impugned judgment and decree, but due to outbreak of Covid-19 pandemic, lockdown was declared by the Government of Assam and that Hon'ble Supreme Court in Suo Moto Writ Petition No.3/2020 has extended the limitation period from 15.03.2020 till 28.02.2022, and thereafter, the applicant No.1 was under treatment upto 12.10.2022 and after recovery, he has consulted with his engaged counsel at Sivasagar for filing appeal with delay condonation petition and in the meantime, he came to know that the jurisdictional Court of Sivasagar district is shifted to Charaideo District Court and he could contact his counsel only on 20.02.2023, for preparation of appeal and misc. case for stay and delay condonation and in the meantime 416 days over and the delay is not intentional and deliberate rather it is circumstantial and that there is sufficient merit in the appeal being preferred by the applicants and therefore, it is contended to allow this petition by condoning the aforesaid delay.

4. On the other hand, Mr. Bezbarua, learned counsel for the respondent submits that though delay has been explained from 04.11.2019 to 12.10.2022, yet from 12.10.2022 till

20.02.2023, the delay has not been explained and Mr. Bezbarua further submits that the decree in the meantime has been executed and the possession of the land has already been handed over to him. Therefore, Mr. Bezbarua has contended to dismiss the petition.

5. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also the disability certificate Annexure-1, of the son of the applicant No.1 and the medical prescriptions Annexure-2 series and the medical prescriptions at Annexure-3 series and it appears that the delay for the period from 04.11.2019 to 12.10.2022 has been sufficiently explained. Though Mr. Bezbarua, learned counsel for the respondents submits that delay from 12.10.2022 till 20.02.2023 has not been explained here, yet, it appears from paragraph 8 of the application that some explanation is being offered for the aforesaid period also and the same appears to be satisfactory.

6. Having considered the submission of learned advocates of both sides and also considering the facts and circumstances on the record and the object of Section 5 of the Limitation Act, this Court is inclined to condone the delay of 416 days in filing the connected appeal.

7. In terms of above, this application stands disposed of.

8. Registry to register and number the appeal and list the same before this Court in due course.

Sd/- Robin Phukan
JUDGE

Comparing Assistant