

GAHC010116312015



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

Case No. : I.A./234/2015

MUSTT ANOWARA BEGUM and ORS

VERSUS

ON THE DEATH OF MD ABDUL SAMAD HIS LEGAL HEIRS - MUSTT.
JAYGUN NESSA and 13 ORS

Advocate for the Petitioner : MR.E U AHMEDA-5and6A-1to4and7

Advocate for the Respondent : MR. R ALI

Linked Case : I.A./235/2015

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ON THE DEATH OF MD ABDUL SAMAD HIS LEGAL HEIRS - MUSTT.
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Advocate for : MR A C SARMA

Advocate for : appearing for ON THE DEATH OF MD ABDUL SAMAD HIS
LEGAL HEIRS - MUSTT. JAYGUN NESSA and 13 ORS

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ON THE DEATH OF MD ABDUL SAMAD HIS LEGAL HEIRS - MUSTT.
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Advocate for : MR.E U AHMEDA-5and6A-1to4and7
Advocate for : appearing for ON THE DEATH OF MD ABDUL SAMAD HIS
LEGAL HEIRS - MUSTT. JAYGUN NESSA and 13 ORS

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

ORDER

Date : 20.03.2023

Heard Mr. H. Das, learned counsel for the applicant. Also heard learned counsel for the respondents.

2. These three applications are taken up together for final consideration.
3. The I.A.(Civil)/234/2015 is filed under Order 22 Rule 4 of the Code of Civil Procedure for substitution of the names of legal heirs of the deceased sole respondent Md. Abdul Samad,

The I.A.(Civil)/235/2015 is filed under Section 5 of the Limitation Act for condonation of delay of 1585 days in preferring the connected application being I.A.(Civil)/234/2015 for substitution of the legal heirs of the deceased sole respondent and the I.A.(Civil)/236/2015 for setting aside abatement on the death of sole respondent, namely Abdul Samad.

4. The delay in preferring the application within the period of limitation has been explained at paragraphs 4,5 and 6 of the application. Perused the same.
5. The learned counsel for the respondent submits that he will not object to condonation of such delay.
6. Considering the matter in entirety including the explanation given at

paragraphs 4,5 and 6 of the application, this Court is of the considered opinion that the applicants were prevented from filing the application within time by sufficient cause beyond their control. Accordingly, the delay in preferring the I.A. (Civil)/234/2015 for substitution of legal heirs is condoned.

7. Accordingly, the abatement is set aside.

8. Also considered the pleadings made in I.A.(Civil)/234/2015. It reflects that the present applicants are legal heirs of the deceased sole respondent who died in the year 2011. Accordingly, the right to sue survives upon the present applicants and therefore, the I.A. is allowed by substituting the present applicants described in para-5 Page No.6 of IA(C) 234/2015 as respondents in place of deceased sole respondent.

9. Registry to correct the cause title of RSA/161/2015 by incorporating the name of the legal heirs of the sole respondent in his place as reflected at paragraph 5 , Page of 6 of the I.A.(Civil)/234/2015.

10. Accordingly, all these three Interlocutory Applications are allowed and disposed of in terms of the aforesaid common order.

JUDGE

Comparing Assistant