

GAHC010121632019



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

Case No. : I.A.(Civil)/2323/2019

SRI NIPEN SAIKIA
S/O- SRI NAREN SAIKIA, VILL.- SINGIMARI (KHANDAJAN), P.O. MANIPUR,
MOUZA- MORIGAON, P.S. AND DIST.- MORIGAON, ASSAM.

VERSUS

SRI NAYANJYOTI BORAGOHAIN
S/O- LATE PRAFULLA BORAGOHAIN, VILL.- MORI GOHAIN GQAON,
WARD NO. 5, P.S. AND MOUZA- MORIGAON, DIST.- MORIGAON, ASSAM.

Advocate for the Petitioner : MR. I CHOUDHURY

Advocate for the Respondent : MR. A K PURKAYASTHA

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 18.01.2023

Heard Mr. I. Choudhury, the learned counsel appearing on behalf of the applicant and Mr. A. K. Purkayastha, the learned counsel appearing on behalf of the respondent.

This is an application under Section 5 of the Limitation Act, 1963 seeking

condonation of delay of 370 days in filing the accompanying Second Appeal against the judgment and decree dated 19.02.2018 passed in Money Appeal No.1/2017.

The case set out in the said application is that the Advocate concerned who was appearing on behalf of the appellant in the appeal before the First Appellate Court did not inform the appellant about the outcome of Money Appeal No.1/2017. However, it was only in the month of April, 2019 that the applicant could come to learn that a money execution proceedings has been initiated against him. Thereupon, the applicant immediately applied for the certified copy of the said judgment and decree dated 19.02.2018 passed in Money Appeal No.1/2017 which was delivered to the applicant on 26.04.2019.

It further transpires from the application that the applicant subsequent thereto, handed over the said papers on 05.05.2019 to another Lawyer who however did not file the appeal for which the applicant has again taken the documents and given those documents to the present Lawyer of the applicant who filed the accompanying Second Appeal alongwith the instant application on 29.05.2019. In the said process, there was a delay of 370 days.

Mr. A. K. Purkayastha, the learned counsel appearing on behalf of the respondent has strenuously objected to the said application stating that the grounds which have been taken in the said application does not seem to be bonafide and allegations have been made against the concerned Advocates without therebeing any materials shown as to whether the applicant has taken any action against the Advocate.

This Court upon hearing the learned counsels for the parties and have given anxious consideration to the matter is of the opinion that the grounds assigned in the said application comes within the ambit of "sufficient cause"

inasmuch as the delay was on account of the counsel of the applicant in Money Appeal No.01/2017 for not informing the applicant about the fate of the appeal. The reasons so stated in the application cannot also be said to be not bonafide inasmuch as it appears from the submission made by the learned counsel for the applicant that the Execution proceedings was initiated in the year 2019 and around the same time, the applicant received the notice and immediately took the remedial steps .

It is also to be taken note of that the respondent is also being affected on account of condoning of the delay for which this Court deems that the same can be compensated by appropriate compensation. Accordingly this Court condones the delay of 370 days in preferring the accompanying Second Appeal subject to deposit of Rs.10,000/- by the applicant before the Registry of this Court within a period of 30 days from today.

It is made clear that this Court condones the delay of 370 days subject to the imposition of cost of Rs.10,000/- and if the said amount is not deposited before the Registry of this Court within the said period of 30 days, the accompanying Second Appeal shall not be registered by the Registry.

The Registry shall release the amount of 10,000/- to the learned counsel of the respondent upon application being filed.

IA stands disposed of.

JUDGE

Comparing Assistant