

GAHC010218002022



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

Case No. : I.A.(Civil)/3510/2022

MANIR ALI BARBHUIYA
S/O LATE MOBARAK ALI BARBHUIYA,
RESIDENT OF VILLAGE TARAPUR PART IV, NEAR ISBT RAMNAGAR, PO
TARAPUR KHELMA, PS SILCHAR, DIST CACHAR.

VERSUS

WAJID ALI BARBHUIYA AND ORS.
S/O LATE MOBARAK ALI BARBHUIYA, VILLAGE TARAPUR IV, PO
TARAPUR (KHELMA) PORGONA, BARAKPUR, PS SILCHAR, DIST CACHAR,
ASSAM

2:ON THE DEATH OF ASHIK UDDIN BARBHUIYA AND MAYARUN NESSA
BARBHUIYA

THEIR LEGAL HEIRS.

2.1:SIRAF UDDIN BARBHUIYA
S/O LATE ASHIK UDIIN BARBHUIYA AND MAYARUN NESSA BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
NEAR ISBT
PO TARAPUR KHELMA
PS SILCHAR
DIST CACHAR.

2.2:AFTAB UDDIN BARBHUIYA
S/O LATE ASHIK UDIIN BARBHUIYA AND MAYARUN NESSA BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
NEAR ISBT
PO TARAPUR KHELMA

PS SILCHAR
DIST CACHAR.

2.3:SULTANA BEGUM
D/O LATE ASHIK UDIIN BARBHUIYA AND MAYARUN NESSA BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
NEAR ISBT
PO TARAPUR KHELMA
PS SILCHAR
DIST CACHAR.

2.4:RUSTANA BEGUM
D/O LATE ASHIK UDIIN BARBHUIYA AND MAYARUN NESSA BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
NEAR ISBT
PO TARAPUR KHELMA
PS SILCHAR
DIST CACHAR.

2.5:HASINA BEGUM
D/O LATE ASHIK UDIIN BARBHUIYA AND MAYARUN NESSA BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
NEAR ISBT
PO TARAPUR KHELMA
PS SILCHAR
DIST CACHAR.

2.6:RASINA BEGUM
D/O LATE ASHIK UDIIN BARBHUIYA AND MAYARUN NESSA BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
NEAR ISBT
PO TARAPUR KHELMA
PS SILCHAR
DIST CACHAR.

3:ON THE DEATH OF JOYED ALI BARBHUIYA

HIS LEGAL HEIRS

3.1:MUSSTT. ANOWARA BEGUM BARBHUIYA

W/O LATE JOYED ALI BARBHUIYA

RESIDENT OF VILLAGE RAMNAGAR (SAMJURAI)
PO TARAPUR (KHELMA) PS SILCHAR DIST CACHAR
ASSAM

3.2:MD. SAHIN AHMED BARBHUIYA
S/O LATE JOYED ALI BARBHUIYA

RESIDENT OF VILLAGE RAMNAGAR (SAMJURAI)
PO TARAPUR (KHELMA) PS SILCHAR DIST CACHAR
ASSAM

3.3:MD. SAJHAN AHMED BARBHUIYA
S/O LATE JOYED ALI BARBHUIYA

RESIDENT OF VILLAGE RAMNAGAR (SAMJURAI)
PO TARAPUR (KHELMA) PS SILCHAR DIST CACHAR
ASSAM

3.4:MD. SAMIM AHMED BARBHUIYA
S/O LATE JOYED ALI BARBHUIYA

RESIDENT OF VILLAGE RAMNAGAR (SAMJURAI)
PO TARAPUR (KHELMA) PS SILCHAR DIST CACHAR
ASSAM

3.5:MD. SABIR AHMED BARBHUIYA
S/O LATE JOYED ALI BARBHUIYA

RESIDENT OF VILLAGE RAMNAGAR (SAMJURAI)
PO TARAPUR (KHELMA) PS SILCHAR DIST CACHAR
ASSAM

3.6:MUSSTT. SIRIN AKTAR BARBHUIYA
D/O LATE JOYED ALI BARBHUIYA

RESIDENT OF VILLAGE RAMNAGAR (SAMJURAI)
PO TARAPUR (KHELMA) PS SILCHAR DIST CACHAR
ASSAM

3.7:MUSST. SAMIM AKTAR TALUKDAR
W/O MD. MAJIBUR RAHMAN TALUKDAR

D/O LATE JOYED ALI BARBHUIYA

RESIDENT OF VILLAGE UTTAR KRISHNAPUR (AULIA BAZAR) PO UTTAR
KRISHNAPUR
PORGONA BARAKPAR
L PS SILCHAR

DIST CACHAR
ASSAM

4:ISMAIL ALI BARBHUIYA

S/O LATE SURMAN ALI BARBHUIYA
RESIDENT OF TARAPUR PART IV
PO TARAPUR (KHELMA) PS SILCHAR
DIST CACHAR
ASSAM

5:MAYARUN NESSA BARBHUIYA
D/O LATE SURMAN ALI BARBHUIYA

C/O WAJID ALI BARBHUIYA

S/O LATE MOBARAK ALI BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
PO TARAPUR (KHELMA) PORGONA
BARAKPUR
PS SILCHAR
DIST CACHAR
ASSAM

6:ANGURUN NESSA BARBHUIYA
D/O LATE SURMAN ALI BARBHUIYA

C/O WAJID ALI BARBHUIYA

S/O LATE MOBARAK ALI BARBHUIYA

RESIDENT OF VILLAGE TARAPUR PART IV
PO TARAPUR (KHELMA) PORGONA
BARAKPUR
PS SILCHAR
DIST CACHAR
ASSA

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : MR. I H LASKAR (r-1 to 6)

Linked Case :

MANIR ALI BARBHUIYA

VERSUS

WAJID ALI BARBHUIYA AND ORS. B

Advocate for : MS. R CHOUDHURY
Advocate for : appearing for WAJID ALI BARBHUIYA AND ORS. B

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

17. 02. 2023

Heard Ms. R Choudhury, learned counsel for the applicant and Mr. PK Deka, learned counsel for all the respondents.

2. The present application is filed under Section 5 of Limitation Act, 1963 praying for condonation of 150 days delay in filing the connected Regular Second Appeal against the judgment and decree dated 04.12.2020 passed in T.A. No. 61/2013 by the learned Civil Judge No. 2, Cachar, Silchar.
3. The delay in approaching this court has been explained at paragraph Nos. 3 and 4 of the present application. The basic reason for such delay pleaded is that after passing of the judgment and decree dated 04.12.2020, the learned engaged counsel of the applicant though tried to contact the applicant, but could not reach to him as the contact numbers in both ends were changed. As a result, the applicant too could not

contact the concerned Advocate. It is also contended that though certified copy was received on 17.12.2020, the same was handed over on 23.12.2020 to the learned counsel and same could not be handed over to the applicant due to lack of communication. Thereafter, only on a chance acquaintance on 12.07.2021 the applicant could meet his engaged counsel could know about the fate of the case and thereafter proceeded and filed this application and in the meantime, there was delay of 150 days.

4. The Opposite Party has filed an objection and contends that the factum that the contact numbers in both ends were changed is not a believable story. Further, the meeting of the counsel as a chance acquaintance is also not believable and the same itself reflects negligence on the part of the appellant. The OP also contends that the story of the appellant being fallen ill is also unbelievable as no supportive document has been annexed with the present case.
5. I have given anxious consideration to the submissions made by the learned counsel for the parties. The Legislature in its wisdom has provided certain period for approaching a court and such object of the Legislature is to bring end to a litigation. At the same time the Legislature has provided right to prefer appeals. It is by now well settled that when the delay is caused to defeat justice or to gain something and if the delay is inordinate or if the person is not prevented by sufficient cause, court will not be inclined to condone a delay otherwise court will not like to take away a right to prefer an appeal.
6. In the given facts and settled proposition of law, this court is of the view that the appellant whose appeal was partly allowed and the part of claim dismissed, will not gain anything by delaying the matter rather it was the

urgency of the present applicant to approach the court in due time. This court is also of the considered opinion that the reasons of delay explained are sufficient cause which prevented the present applicant in filing the connected second appeal.

7. Accordingly, the IA is allowed by condoning the delay of 150 days in preferring the connected second appeal.
8. Registry to register the second appeal and list it for admission hearing under Order XLI Rule II of the CPC.
9. While listing the case, Registry to reflect the name of Mr. PK Deka as the counsel for the respondents.
10. The applicant shall furnish a copy of the memo of appeal to the learned counsel.

JUDGE

Comparing Assistant