

GAHC010218452021



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

Case No. : I.A.(Civil)/240/2022

SYED NAIMUL ISLAM AND 39 ORS
S/O SYED YUNISH ALI R/O KUMARPARA P.O. PUTHIMARI DIST. KAMRUP,
ASSAM.

2: SYEDA SAMINA EASMIN
W/O SYED TAHIDUL ISLAM R/O BARIACHAKONA P.O. MADHUKUCHI
DIST.KAMRUP
ASSAM

3: BANDANA DEKA
S/O NAREN DEKA R/O MANDAKATA
P.O.MANDAKATA DIST. KAMRUP
ASSAM.

4: SRI SIBA PRASAD DEKA
S/O DIMBESWAR DEKA R/O MANAPARA
P.O. MENAPARA DIST. DARRANG
ASSAM.

5: JAYANTA BARUAH
S/O JALTI RAM BARUAH R/O DUNI
P.O. DUNI DIST. DARRANG
ASSAM.

6: SRI DIPENDRA SAHARIA
S/O CHAMPAK SAHARIA R/O MENAPARA
P.O. MENAPARA DIST. DARRANG
ASSAM.

7: SRI LOHIT CH. KALITA
S/O LT. DEOBAR KALITA R/O NO. 2 MAZGAON
P.O. DHULA DIST. DARRANG
ASSAM.

- 8: ANIMA BALA DEKA
D/O SRI NAREDNDRA NATH DEKA R/O SANTIPARA WARD NO. 1
P.O. MANGALDOI DIST. DARRANG
ASSAM.
- 9: SRI MANASH KUMAR SAHARIA
S/O BASANTA KUMAR SAHARIA R/O SATGHARIA
P.O. SIPAJHAR DIST. DARRANG
ASSAM.
- 10: MISS. PREMADA KALITA
D/O LT. BHUMIDHAR KALITA R/O HIRAPARA
P.O. DHULA DIST. DARRANG
ASSAM.
- 11: MS. LILIMA BEGUM
D/O MD. SAYEF ALI R/O BARKUMARPARA P.O. PATHARIGHAT DIST.
DARRANG
ASSAM.
- 12: MISS. RUMI DAS
D/O SRI HAREN DAS R/O DOOMDOMIA
P.O. BALISATRA DIST.NAGAON
ASSAM.
- 13: NURJAHAN BEGUM
W/O MD. RIAZUDDIN R/O KADAMONI PATHAR P.O. KADAMONI
DIST.NAGAON
ASSAM.
- 14: SRI GAKUL DAS
S/O MAHENDRA NATH DAS R/O KUJIDAH
P.O. HATICHONG DIST.NAGAON
ASSAM.
- 15: SRI BISWAJYOTI BARDALOI
S/O LT. DARSHAN BARDALOI R/O LALUNG GAON
P.O. LALUNG GAON DIST.NAGAON
ASSAM.
- 16: MD. ZAKIR HUSSAIN
S/O LT. HAZARAT ALI R/O VILL- NIZ JURIA P.O. and P.S. JURIA
DIST.NAGAON
ASSAM.
- 17: MD. AFZALUR AZMAL
S/O MD. AFTAB UDDIN R/O VILL and P.O. ALITANGANI P.S. JURIA
DIST.NAGAON

ASSAM.

18: JAHAN UDDIN MANDAL
S/O HANIF UDDIN MANDAL R/O FARINGAPARA
P.O. LAKHIPUR DIST. GOALPARA
ASSAM.

19: MOFIDUL ISLAM
S/O SHAHAR ALI R/O TAKIMARI BARBILA P.O. TAKIMARI DIST.
GOALPARA
ASSAM.

20: SAIFUL ISLAM
S/O HAZRAT ALI R/O SIMLABARI
P.O. SIMLABARI DIST. GOALPARA
ASSAM.

21: ABDUL MATLEB
S/O MD. SUKUR ALI R/O BAHATI BHATIAPARA P.O. BAHATI DIST.
GOALPARA
ASSAM.

22: ABIDA AHMED
W/O DR. AHMED HUSSAIN R/O NABI NAGAR
P.O. HELAPAKRI DIST. GOALPARA
ASSAM.

23: REZAUL HOQUE MONDAL
S/O ABU BOKKAR SIDDIQUE MONDAL R/O CHAKALAPARA
P.O. BASHBARI DIST. GOALPARA
ASSAM.

24: SAHAB UDDIN MONDAL
S/O ISMAIL HUSSAIN SALBARI PART-I
P.O. GAUR NAGAR DIST. GOALPARA
ASSAM.

25: MD. KASHEM ALI
S/O LT. ASHUR UDDIN SK. R/O KARTIMARI
P.O. DHUMERGHAT DIST. GOALPARA
ASSAM.

26: SHONAHAR ALI
S/O MOKTAR ALI R/O CHILABHITA
P.O. TULSIBARI DIST. GOALPARA
ASSAM.

27: ZAHANGIR ALOM

S/O HABIBUL ISLAM R/O KHARUBHAI
P.O. RAJMITA DIST. GOALPARA
ASSAM.

28: SRI UTTAM KARMAKAR
S/O MONOORANJAN KARMAKAR R/O DHUMERGHAT
P.O. DHUMERGHAT DIST. GOALPARA
ASSAM.

29: MOZMUL HOQUE
S/O AKBOR ALI AHMED R/O TARANGAPUR
P.O. TULSIBARI DIST. GOALPARA
ASSAM.

30: K.M. JAKIR HUSSAIN
S/O ABDUL JABBER R/O VILL and P.O. JOYPURBAZAR P.S. BAGUAN DIST.
GOALPARA
ASSAM.

31: BEGUM SHOFIKA AHMED
S/O SHAMSUDDIN AHMED R/O AOLATOLI
P.O. AOLATALI DIST. GOALPARA
ASSAM.

32: MD. HABIBAR RAHMAN
S/O LT. AKBOR ALI R/O VILL- CHAPGARH P.O. KHUDIMARI
P.S. GAURIPUR DIST. DHUBRI
ASSAM.

33: MS. SOFIA AKHTAR BANU
D/O MD. SAMSUL HOQUE R/O VILL- CHAPGARH P.O. KHUDIMARI
P.S. GAURIPUR
DIST. DHUBRI
ASSAM.

34: SRI GOPI NATH SARKAR
S/O SRI SUKMOHAN SEN R/O VILL-RAMRAIKUTI
PART-I
P.O. SATRASAL
P.S. AGOMONI DIST. DHUBRI
ASSAM.

35: MD. SAHA ALOM SHEIKH
S/O MD. MOHOR ALI SHEIKH R/O VILL- DALSHINGHER ALGA PART-I
P.O. ASHRIKANDI
P.S. GAURIPUR DIST. DHUBRI
ASSAM.

36: MD. MANOWAR HUSSAIN MONDAL
S/O MD. ABDUR RAFIQUE MONDAL
R/O VILL- JANGAL CHARIALI P.O. KALAPUMI
DIST. DHUBRI
ASSAM.

37: MD. ISMAIL NUSSAIN MONDAL
S/O MD. ABDUL MAZID MONDAL R/O VILL- BALADOBA P.O. and P.S.
SOUTH SALMARA DIST.DHUBRI
ASSAM.

38: MD. JAKIR HUSSAIN
S/O MD. SHAHEB ALI R/O VILL- ARATGRAM P.O. RADHAMADHAB HAT
P.S. MANKACHAR DIST. DHUBRI
ASSAM.

39: MD. WASHKURMI MOLLAH
S/O LT. ANOWARUL ISLAM MOLLAH R/O VILL- ARATGRAM P.O.
RADHAMADHAB HAT P.S. MANKACHAR DIST. DHUBRI
ASSAM.

40: SRI TAPAN KUMAR RAY
S/O SRI DHIRENDRA NATH RAY R/O VIL- SONAKALI
P.O. DHIGHALTARI P.S. GOLOKGANJ DIST. DHUBRI
ASSAM

VERSUS

UNION OF INDIA AND 11 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HUMAN
RESOURCES AND DEVELOPMENT, DEPARTMENT OF SCHOOL EDUCATION
AND LITERACY, SHASTRI BHAWAN, NEW DELHI.

2:MINISTRY OF FINANCE DEPARTMENT
OF EXPENDITURE PLAN FINANCE DIVISION
NORTH BLOCK
NEW DELHI.

3:THE STATE OF ASSAM

REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPARTMENT
DISPUR GUWAHATI-6.

4:THE SECRETARY TO THE
GOVT. OF ASSAM
EDUCATION SECONDARY DEPARTMENT
DISPUR

GUWAHATI-6.

5:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

6:THE DIRECTOR OF NODAL OFFICER
OF IESSS SCHEME O/O DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

7:THE INSPECTOR OF SCHOOLS

NAGAON DISTRICT CIRCLE
DIST. NAGAON
ASSAM.

8:THE INSPECTOR OF SCHOOLS

DARRANG DISTRICT CIRCLE
DIST. DARRANG
ASSAM.

9:THE INSPECTOR OF SCHOOLS

KAMRUP DISTRICT CIRCLE DIST. KAMRUP
ASSAM.

10:THE INSPECTOR OF SCHOOLS

GOALPARA DISTRICT CIRCLE
DIST. GOALPARA
ASSAM.

11:THE INSPECTOR OF SCHOOLS

DHUBRI DISTRICT CIRCLE
DIST. DHUBRI
ASSAM.

12:THE SECRETARY

REP. BY THE DHULA REGIONAL PHYSICALLY HANDICAPPED
DEVELOPMENT ASSOCIATION
DARRANG

ASSAM
PIN - 784146

Advocate for the Petitioner : MR. S P SHARMA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 20-06-2023

Heard Mr. S.P. Sharma, learned counsel for the applicant. Also heard Mr. S.S. Roy, learned CGC appearing for respondent Nos.1 and 2, Ms. D Mushahary, learned counsel appearing for respondent Nos.3 to 11.

This is an application filed under section 5 of the Limitation Act for condonation of delay of 1134 days in filing the restoration petition.

A co ordinate bench in ***Kanak Chandra Sharma V. Board of Secondary Education Assam*** reported in ***AIR 1995 Gauhati 82*** held that the writ petition under Article 226 of the Constitution of India cannot be regarded as an application under CPC'1908. Neither it is a suit nor petition or application under the CPC' 1908.

The issue concerning applicability of the provisions of the CPC in the writ proceedings is no longer res integra in view clear pronouncement made by the Supreme Court in ***Puran Singh and Others v State of Punjab and Others*** reported in ***AIR-1996-SC-1092*** wherein the Supreme Court was dealing with an issue as to whether the provisions contained under Order 22 of the CPC are applicable to proceedings under Article 226 & 227 of the Constitution of India. Noticing divergences of views amongst different High Courts and having dealt the matter quite vividly the Supreme Court held thus in paras 5, 9 & 10 :

5.....When the High Court exercises extraordinary jurisdiction under Article 226 of the constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us, in view of the conflicting opinions expressed by the different courts, the Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression "proceedings" does not include "any proceedings under Articles 226 of the Constitution" and statutorily recognized the views expressed by some of the courts that writ proceedings under Article 226 of the Constitution shall not be deemed to be proceedings within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed in the Code in regard to suits shall be followed, as far as it can be made applicable "in all proceedings in any court of civil jurisdiction" it shall not include a proceeding under Article 226 of the constitution. In this background, according to us, it cannot be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings. If even before the introduction of the explanation to Section 141, this Court in the case of **Babubhai v. Nandlal AIR 1974 SC 2105** (supra) had said that the words "as far as it can be made applicable occurring in Section 141 of the Code made it clear that in applying the various provisions of the Code to the proceedings other than those of a suit, the court has to take into consideration the nature of those proceedings and the reliefs sought for" after introduction of the explanation the writ proceedings have to be excluded from the expression "proceedings" occurring in Section 141 of the Code. **If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code 'as far as it can be made applicable' to such proceeding. The procedures**

prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extraordinary powers by the High Court under Articles 226 and 227 of the Constitution.

9. We have not been able to appreciate the anxiety on the part of the different courts in judgements referred to above to apply the provisions of the Code to Writ Proceedings on the basis of Section 141 of the Code.

When the constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. **No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code.** Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well recognized principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. **The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious.**

10. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it

does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court. **If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be.** At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final.(emphasis supplied by this Court).

In view of the aforesaid determination, the present application filed under section 5 of the Limitation Act is having no requirement inasmuch as, the writ petition dismissed for default can be restored by the Court in a given case in exercise of its extra ordinary jurisdiction and on the prayer of the party aggrieved and for such

purpose there is no mandatory requirement to strictly follow the provisions of Order IX Rule 4 of the CPC.

With the aforesaid observation, the present I.A stands closed.

JUDGE

Comparing Assistant