

GAHC010008742024



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

Case No. : I.A.(Civil)/138/2024

NOOR ISLAM
S/O LATE JAINUDDIN,
RESIDENT OF VILLAGE GOTLONG, PO KALIABHOMORA, MOUZA
BHAIRABPAD, PS TEZPUR, DIST. SONITPUR, ASSAM, 784027

VERSUS

ISUB ALI AND ANR.
S/O LATE JAINUDDIN,
RESIDENT OF VILLAGE GOTLONG, PO KALIABHOMORA, MOUZA
BHAIRABPAD, PS TEZPUR, DIST. SONITPUR, ASSAM, 784027

2:MD. SHAIRAB ALI
S/O LATE JAINUDDIN

RESIDENT OF VILLAGE GOTLONG
PO KALIABHOMORA
MOUZA BHAIRABPAD
PS TEZPUR
DIST. SONITPUR
ASSAM
78402

Advocate for the Petitioner : MR. P MAHANTA, C SARMA, MS. P SAHARIA, V
KHAKHALARY

Advocate for the Respondent : MR. P SUNDI,

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 19.08.2024

Heard Mr. P. Mahanta, learned counsel for the applicant. Also heard Mr. P. Sundi, learned counsel for the respondent Nos. 1 & 2.

This is an application under Section 5 of the Limitation Act for condoning the delay of 30 days in preferring the accompanying RSA against the judgment dated 25.08.2023 and decree dated nil passed in Title Appeal No. 14/2022 by the learned civil Judge, Senior Division, Sonitpur, Tezpur.

Mr. P. Mahanta, learned counsel for the applicant submits that since the counsel expired immediately after the delivery of the judgment by the Trial Court, it took some time for the applicant to collect the relevant records and engage a new counsel for seeking advice and hence the delay of 30 days occurred in filing the accompanying appeal.

Mr. P. Sundi, learned counsel for the respondent Nos. 1 & 2 submits that he has not received any instruction to object the condonation of delay.

I have given prudent consideration to the arguments made by the learned counsel for the applicant and perused the averments and grounds stated in the instant condonation application.

Paragraphs 3,4,5,6,7,8,9,10,11 & 12 is reproduced hereunder for ready reference.

“3. That, the applicants/ petitioner begs to state that after passing of the judgment dated 25.08.2023 and decree dated nil passed in Title Appeal No. 14/2022 y the learned Civil Jude, Senior Division, Sonitpur, Tezpur, the petitioner has filed an application for obtaining certified copy of the said judgment and decree ad on notifying the requisite court fee on 18.09.2023, the court fee were furnished on the same day and after furnishing the folio stamp, the copy was ready for delivery on 19.09.2023 and the copy was received by the petitioner on 21.09.2023.

4. That, after receiving the certified copy of the judgment and decree, the petitioner immediately on 22.09.2023 rushed to his dealing advocate to decide the further course of action and on reaching the residence of his dealing advocate namely Sri Ahok Mahanta of Tezpur, the petitioner came to know the that his dealing advocate ashok Mahanta was seriously ill on 19.09.2023 for which he was rushed to the local hospital Nemcare at Tezpur where he died on 20.09.2023. Accordingly, the petitioner could not handed over the judgment to his appointed advocate ad on being advised by the junior of his dealing advocate to come after solemnising of the death rituals which would be observed on 01.10.2023 and thereby the petitioner came back to his residence without any consultation with the junior of late dealing advocate.

5. That, on completion of the death rituals on 01.10.2023, the petitioner went to the chamber on 05.10.2023 and met oe of the junior of his dealing advocate and handed over the copy of the judgment dated 25.08.2023 passed in Title Appeal No. 14/2022 by the learned Civil Judge, Senior Division, Sonitpur, Tezpur to him for advise what further action should e taken on the judgment dated 25.08.2023 passed in Title Appeal No. 14/2022ad on handing over the said copy, the junior of the dealing advocate of the petitioner advised him to come after 15 days so that the might have gone through the judgment of the appeal and give proper advise to the petitioner.

6. That, the petitioner begs to state that, after expiry of 15 days, the petitioner again on 25.10.2023

went to the chamber of his late advocate and on that day one of the junior of is late advocate advised him to prefer an appeal and to contact one advocate at Guwahati for preferring a second appeal before the Hon'ble Gauhati High Court against the said judgment dated 25.08.2023.

7. That, on advised, the petitioner contacted his present advocate at Guwahati on telephone for preparing and filling the second appeal before this Court, but as there was puja vacation going on and the advocate of the petitioner was in out of station availing the puja vacation which was continue till 5.11.2023 from 20.10.2023 and the advocate concerned advised him to come his chamber at Guwahati after 7.11.2023 as he was not available tioll 6.11.2023 and accordingly, the petitioner met his advocate at Guwahati on 10.11.2023 and handed over the certified copy of the judgment dated 25.0-8.2023 ad decree dated nil passed in Title Appeal No. 14/2022 by the learned Civil Judge, Senior Division, Sonitpur, Tezpur ad after going through the said judgment and decree, the present advocate expressed his opinion for preferring the second appeal against the said judgment and decree ad asked the petitioner to come with all relevant records of both the Court below ad along with the copy of the judgment ad decree passed by the learned Munsiff No. 1, Tezpur in Title Suit No. 22/2013.

8. That, on the advised of the present advocate, the petitioner went back to his native place at Tezpur and on the next date 11.11.2023 he rushed to he office of his earlier advocate and met his junior and requested him to handover the all records of both the court below for preferring the second appeal and on that, the junior of his late dealing advocate informed him that, after death of his senior the briefs maintained in the chamber has been shifted to a new place with some new arrangement of file and in that situation, it will take some time to locate the file of the petitioner and again advised him to come after 15 days, by this time the advocate concerned would be able to locate the file.

9. That, the petitioner begs to state that, on the said advised, the petitioner again went to his late advocate's chamber on 20.11.2023 to meet his junior and on the same day, the junior of the late advocate handed over the file of both the court below to the petitioner.

10 That, on received of the said file, the petitioner made preparation to come down to Guwahati, but as the petitioner was not so financially sound to collect the money which were required to meet he expenses for preferring the second appeal, he could not come immediately to Guwahati to meet his present advocate, However, after collecting some amount of money to meet up the expenditure for preferring the appeal, the petitioner came to Guwahati on December 20, 2023 and handed over the file to his present engaged lawyer for preparing the second appeal.

11. That, after receiving the complete file, the engaged lawyer of the petitioner has gone through the entire documents and made a mind to prepare the second appeal, but as the High Court's winter vacation was started from 23.12.2023 till 2.1.2024 and as the advocate of the petitioner had made all preparation for availing his vacation outside the state till 3.1.2024, he could not prepare same immediately and after availing his vacation at Puri till 3.1.2024, the advocate for the petitioner had gone through the records finally and prepared the accompanying appeal and got ready on 10.1.2024 and has been filed the same on the said date.

12. That, the accompanying appeal should have been filed on or before 12.11.2023, but same has been filed before the Hon'ble Court on 10.1.2024 after lapse of 30 days and also 19 days in procuring the certified copy of the judgment dated 25.08.2023 and decree passed in Title Appeal No. 14/2022 by the learned Civil Judge, Senior Division, Sonitpur, Tezpur."

Reading of the aforesaid averments, it appears that the applicant approached the engaged counsel after the impugned judgment dated 25.08.2023 which was passed in Title Appeal No. 14/2022 by the Trial Court. It further appears that after the applicant decided to file the second appeal, when went to meet the counsel along with the relevant records, he came to know about the death of the leading advocate.

Thereafter, the junior counsel took some time to locate the file of the petitioner and to file the accompanying appeal. In the said process the delay of 30 days has occurred.

The aforesaid explanation furnished by the learned counsel for the appellant appears to be sufficient to condone the delay in filing the RSA.

As such, the delay of 30 days caused in filing the RSA is condoned.

The I.A.(C) stands allowed.

Let the Registry register the accompanying RSA and list the same for admission.

The I.A.(C) is disposed of.

JUDGE

Comparing Assistant