

GAHC010051972015



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

Case No. : MC/156/2015

JOGEN PATOR,
S/O LATE DHULABOR PATOR, R/O VILL. DHURASAP, P.S. and MOUZA
MIKIRBHETA, DIST. MORIGAON, ASSAM.

VERSUS

MD. RUSTOM ALI and 5 ORS,
S/O HOBIBULLAH

2:MD. RAHMAN ALI

S/O HOBIBULLAH
RESPONDENT NO. 1 AND 2 ARE R/O MORIMUSALMAN GAON
MORIGAON TOWN
P.O. and P.S. MORIGAON
DIST. MORIGAON
ASSAM.

3:PITSING PATOR

S/O LATE DHULABOR PATOR

4:SUNIL PATOR
S/O LATE DHULABOR PATOR

5:CHANDRA KANTA PATOR

S/O LATE CHIDHBOR PATOR
RESPONDENT NO. 3
4 AND 5 ARE R/O VILL. DHURASAP
P.S. and MOUZA-MIKIRBHETA
DIST. MORIGAON

ASSAM.

6:MD. NOBI HUSSAIN

S/O BHUKHAI
R/O VILL. CHOTORIBORI
P.S. and MOUZA MIKIRBHETA
DIST. MORIGAON
ASSAM

For the appellant (s) : Mr. U. Dutta, Advocate

For the respondent (s) : None appears

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

22.03.2024

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 222 days in preferring the accompanying second appeal.

2. It is relevant to take note of that this Court vide an order dated 30.01.2015 had issued notice. Till date, no service has been effected upon the respondents. It is also relevant to take note of that the petitioner was also directed to take steps by way of dasti upon the respondents. However, no steps have been taken by the petitioner till date.

3. Under such circumstances, this Court, therefore, takes note of as to whether the instant application seeking condonation of delay is at all required to be further proceeded with taking into account that no steps have been taken by the appellant/petitioner inspite of issuance of

directions to that effect. Under such circumstances, this Court finds it appropriate to take note of the grounds assigned for condonation of delay.

4. The record reveals that on 10.10.2013, the judgment and decree was passed by the learned First Appellate Court in Title Appeal No.16/2011. Thereupon, it reveals that the applicant came to learn about the said judgment and order on 31.10.2023. The record further reveals that the certified copy of the said judgment and decree was applied on 07.11.2023 and on the same date, the certified copy was received. The said application further reveals that thereupon the applicant has been only taking steps for discussion as to whether to further pursue the filing of the appeal inspite of the fact that the learned counsel having advised the Applicant on 10.11.2023 itself that he should prefer an appeal. It is mentioned in the application that the applicant was also suffering from certain illness.

5. This Court has duly taken note of the medical certificate which has been enclosed as Annexure-A to the application and from the said certificate, it reveals that the applicant was under treatment and medical advice and he was advised for complete rest for 1 ½ months w.e.f.12.12.2013. Thereafter, the applicant did not file the instant appeal rather the appeal was filed on 21.08.2014. There is no explanation after January 2014 why the applicants could not file the Appeal.

6. Under such circumstances, this Court does not find the grounds assigned in the application as sufficient grounds for condoning the delay of 222 days in preferring the appeal. Accordingly, the instant Application stands rejected.

7. It is also observed that in view of the rejection of the application for condonation of delay, the accompanying second appeal which is yet to be numbered cannot be entertained being barred by limitation.

JUDGE

Comparing Assistant