

GAHC010060162023



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

Case No. : I.A.(Civil)/812/2023

SRI SAKUNTOLA KANU AND ANR
W/O LATE KESHAB PRASAD KANU, VILL. HAILAKANDI TOWN, WARD NO.
12, P.O. HAILAKANDI, P.S. HAILAKANDI, DIST. HAILAKANDI, ASSAM, PIN
788152

2: SRI SHEKHAR PRASAD KANU
S/O LATE KESHAB PRASAD KANU
PRESENTLY RESIDING AT VILL. HAILAKANDI
P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN 78815

VERSUS

SRI RAJENDRA PRASAD KANU AND 14 ORS
S/O LATE RAMUGRA PRASAD KANU, VILL. HAILAKANDI TOWN, WARD
NO. 12, P.O. HAILAKANDI, P.S. HAILAKANDI, DIST. HAILAKANDI, ASSAM,
PIN 788152

2:SRI SANJAY KUMAR KANU
S/O SRI SUMANTA LAL KANU
R/O VILL. NEVIA BAZAR
P.O. OLIVIA CHERRA
P.S. RATABARI
DIST. KARIMGANJ
ASSAM
PIN 788737

3:SRI NANDA KISHOR KANU
S/O SRI SUMANTA LAL KANU
R/O VILL. NEVIA BAZAR
P.O. OLIVIA CHERRA
P.S. RATABARI

DIST. KARIMGANJ
ASSAM
PIN 788737

4:SRI SANJIB KANU
S/O SRI SUMANTA LAL KANU
R/O VILL. NEVIA BAZAR
P.O. OLIVIA CHERRA
P.S. RATABARI
DIST. KARIMGANJ
ASSAM
PIN 788737

5:SRI DIDUL KANU
S/O SRI SUMANTA LAL KANU
R/O VILL. NEVIA BAZAR
P.O. OLIVIA CHERRA
P.S. RATABARI
DIST. KARIMGANJ
ASSAM
PIN 788737

6:SRI KAMALJIT KANU
S/O SRI SUMANTA LAL KANU
R/O VILL. NEVIA BAZAR
P.O. OLIVIA CHERRA
P.S. RATABARI
DIST. KARIMGANJ
ASSAM
PIN 788737

7:SMTI SUMITRA KANU
W/O SRI RAJENDRA PRASAD
VILL. IRRIGATION DIVISION OFFICE
SRKARI BAGAN
P.O. HAFLONG
DIST. NORTH CACHAR HILL
PIN 788819
PRESENTLY RESIDING AT HOUSE NO. 3N
JURIPAR
PANJABARI
3RD BY LANE
WARD NO. 53
GUWAHATI-37
ASSAM.

8:SMTI SARITA GUPTA
W/O SRI RAVI SHANKAR GUPTA

R/O SWEET PALACE PARADISE
MAIN ROAD
DANAPUR BAZAR
DANAPUR CANTT.
PATNA
BIHAR
PIN 801503

9:SMTI SHARMILA GUPTA
W/O LATE BIJON KUMAR GUPTA
26-04
166 STREET
DIST. SLUSHING
NEW YORK
PIN 11358 U.S.A.

10:SMTI SHARMISTA GUPTA
W/O SRI MONOJ KUMAR GUPTA
FLAT NO. 101
SONA SUSHILA APARTMENT
12 MIAN ROAD
MATRIKERI
BANGLORE 54

11:SRI SHEKHAR PRASAD KANOO
S/O LATE KASHAB PRASAD KANU
PRESENTLY RESIDING AT HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI
P.S. AND DIST. HAILAKANDI
ASSAM
788152.

12:SRI BIJAY PRASAD KANU
S/O BOYAJNATN PRASAD KANU
R/O HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN 788152

13:SRI AJAY PRASAD KANU
S/O LAKSHI RANI KANU AND LATE GANESH PRASAD KANU
VILL. HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI

P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN 788152

14:SMTI BHAGABOTI SAHU
W/O LATE PAROSH NATH SAHU
C/O MAA DENTAL CLINIC
R/O SHIBBARI ROAD
HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN 788152

15:SRI SUBRATA KUMAR DEB
S/O LATE SUNIL KUMAR DEB
AGENT
NETWORK TRAVELS
HAILAKANDI TOWN
WARD NO. 11
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN 78815

For the Petitioner(s) : Mr. M. J. Quadir, Advocate

For the Respondent(s) : Mr. S. K. Ghosh, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 15.03.2024

1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 1317 days in filing the application for restoration of RSA No.148/2018 which was dismissed on withdrawal on 07.06.2019.

2. From a perusal of the materials on record, it reveals that on 07.06.2019, the RSA No.148/2018 which was at the hearing stage was withdrawn by the counsel representing the Appellants. It was under such circumstances, the said RSA No.148/2018 was dismissed on withdrawal.

3. The reason assigned for filing this application on 17.03.2023 i.e. after a period of 1317 days is that the Applicant No.1 was at Bangalore with her daughter and the Applicant No.2 was also staying at Bangalore after filing of the second appeal during the period from 2019-2020 and he had little knowledge about the legal proceedings for which he did not enquire about the second appeal. It is the specific and categorical statement made in paragraph No.12 of the application that only after return of the Applicant No.1 from Bangalore in the month of January, 2023 they enquired about the second appeal in the month of February, 2023 from the website of the Gauhati High Court and came to know about the withdrawal of the second appeal.

4. On the other hand, a perusal of the said application and more particularly at paragraph No.8, it shows that the Applicant No.2 had duly appeared before the executing Court on 08.02.2021 in connection with Title Execution Case No.15/2019 which was continued pursuant to the dismissal of the RSA No.148/2018. Therefore, when the Applicant No.2 had duly participated in the said Title Execution Case No.15/2019 and that too specifically on 08.02.2021, the Applicant No.2 duly had knowledge about the order passed by this Court on 07.06.2019 whereby the RSA No.148/2018 was dismissed on withdrawal. In that view of the matter, the grounds which have been made for seeking condonation of delay of 1317 days on the face of it appears to be incorrect and mischievous in order to mislead this Court for which this Court dismisses the instant application for condonation of delay.

5. Apart from that, this Court also finds it relevant to take note of that when the Regular Second Appeal was dismissed on withdrawal, the question of restoration of the said appeal is beyond comprehension and as such on merits also, the restoration of the appeal has no legs to stand. Consequently, the I.A. (Civil) No.812/2023 stands dismissed. This Court imposes a cost of Rs.10,000/- upon the Applicants to be deposited before this Court.

JUDGE

Comparing Assistant