

GAHC010066602022



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

Case No. : I.A.(Civil)/1215/2022

SURJAT ALI AND ANR.
S/O LATE MONTAJ ALI RESIDENT OF VILLAGE BOGAIJANPARA, MOUZA
GHILAZARI, PO JOSHIHATI, PS HOWLY, DIST BARPETA, ASSAM 781316

2: MD. BARGIS ALI
S/O ABDUR RACHID

RESIDENT OF VILLAGE BOGAIJANPARA
MOUZA GHILAZARI
PO JOSHIHATI
PS HOWLY
DIST BARPETA
ASSAM 78131

VERSUS

SAHJAHAN ALI AND ANR.
S/O LATE HATEM ALI RESIDENT OF VILLAGE BOGAIJANPARA, MOUZA
GHILAZARI, PO JOSHIHATI, PS HOWLY, DIST BARPETA, ASSAM 781316

2:MD. ABDUL GANI
S/O LATE ABDUL MAZID

RESIDENT OF VILLAGE DHAKALIAPARA
MOUZA GHILAZARI
PO JOSHIHATI
PS HOWLY
DIST BARPETA
ASSAM 78131

For the Petitioner(s) : Mr. M. H. Ahmed, Advocate

For the Respondent(s) : Mr. S. R. Barbhuiya, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 03.04.2024

1. This is an application under Section 5 of the Limitation Act, 1963 for condoning the delay of 1193 days in preferring the accompanying Regular Second Appeal against the judgment and decree dated 07.09.2011 passed by the learned Civil Judge, Barpeta in Title Appeal No.61/2011 thereby allowing the appeal and setting aside the judgment and decree dated 03.09.2011 in Title Suit No.194/2009 passed by the Munsiff No.1, Barpeta.
2. From a perusal of the application, it reveals that the Applicant No.2 is in a Government job discharging official duties. It has been stated that the Applicant No.2 gave the responsibility to the Applicant No.1 to take care of the case before the First Appellate Court. It is also stated that the Applicants duly engaged one Mr. B. D. Das, Advocate as the counsel for the Applicants. Various allegations have been made against the said counsel stating that the said counsel did not inform the applicants about the fate of the said First Appeal before the Court of the Civil Judge, Barpeta. However, nothing has been brought on record as to what further actions have been taken against the said counsel.
3. From a perusal of the said application, it reveals that the applicants' only ground is blaming the advocate and nothing else. In the opinion of this Court, the said plea is nothing but subterfuge in order to mislead this Court for condoning the delay more so when there is no action taken by the Applicants against the said Advocate.

4. This Court further observes that merely making such statements against a counsel who represented the Applicants in the First Appellate proceedings is not enough. The Applicants are required to bring materials on record as to what steps were taken against the counsel for his alleged default. In addition to that, it is also unbelievable when appeals in the District Judiciary are taken up by the Courts by fixing dates, the Applicants were not aware for a period of almost 11 years inasmuch as the judgment and decree was passed on 07.09.2011 and the Appeal with the condonation application was filed in the year 2022.

5. Under such circumstances, the grounds and reasons so shown in the instant application in the opinion of this Court are not sufficient for condoning the delay of 1193 days in preferring the accompanying Second Appeal for which the instant application stands rejected.

6. The consequential affect of rejection of the instant application for condonation of delay is that the accompanying second appeal cannot be entertained as it is barred by limitation.

JUDGE

Comparing Assistant