

GAHC010083512023



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

Case No. : RSA/72/2023

ABDUL KHALIQUE
S/O LATE WATIR ALI,
RESIDENT OF VILLAGE LATU PURANPARA (LATUKANDI) PO LATU, PS
AND DIST KARIMGANJ, ASSAM.

VERSUS

ABDUL LATIF AND 12 ORS .
S/O LATE AKAL MIA
RESIDENT OF VILLAGE LATU KANDI PO LATU, PS AND DIST KARIMGANJ,
ASSAM.

2:MUSSTT. ANOWARA BEGUM
D/O AKAL MIA
RESIDENT OF VILLAGE LATU KANDI PO LATU
PS AND DIST KARIMGANJ
ASSAM.

3:SUMI BEGUM
W/O MD. ALLA UDDIN

RESIDENT OF VILLAGE LATU KANDI PO LATU
PS AND DIST KARIMGANJ
ASSAM.

4:ALLA UDDIN
S/O LATE AKAL MIA
RESIDENT OF VILLAGE LATU KANDI PO LATU
PS AND DIST KARIMGANJ
ASSAM.

5:SAYED NURUL ISLAM

S/O LATE SAYED PIR BADRUJJAMAN
RESIDENT OF VILLAGE LATU KANDI PO LATU
PS AND DIST KARIMGANJ
ASSAM.

6:LATU KANDI JAME MOSJID
REPRESENTED BY THE SECRETARY OF THE MASJID COMMITTEE
NAMELY MOSTOKIN ALI
S/O LATE KALA MIA

RESIDENT OF VILLAGE LATU KANDI PO LATU
PS AND DIST KARIMGANJ
ASSAM.

7:THE STATE OF ASSAM
ASSAM

8:THE SETTLEMENT OFFICER

KARIMGANJ
PO PS AND DIST KARIMGANJ
ASSAM

9:STRUCK OFF VIDE ORDER DATED 22.05.2024
N/A

10:STRUCK OFF VIDE ORDER DATED 22.05.2024
N/A

11:STRUCK OFF VIDE ORDER DATED 22.05.2024
N/A

12:STRUCK OFF VIDE ORDER DATED 22.05.2024
N/A

13:STRUCK OFF VIDE ORDER DATED 22.05.2024
N/

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : MR. D HUSSAIN (R-1,4,5)

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

27.05.2024

This is an appeal under Section 100 of the Code of Civil Procedure 1908 (for short, the Code) challenging the order dated 10.01.2023 passed in Misc. Case No.104/2022 whereby the application under Section 5 of the Limitation Act, 1963 (for short, the Act of 1963) was rejected thereby the accompanying appeal which was filed being Title Appeal No.5/2022 was dismissed being barred by limitation.

2. This Court vide an order dated 21.06.2023 had admitted the instant appeal by formulating the following substantial questions of law:

Whether the First Appellate Court was justified in rejecting the application under Section 5 of the Limitation Act, 1963 vide order dated 10/01/2013 without taking into consideration the order dated 10/2/2023 passed by the Supreme Court in Suo Moto Writ Petition (C) No.3/2020?

3. The question arises in the instant proceedings as to whether the learned First Appellate Court i.e. the Court of the learned Civil Judge Karimganj was justified in rejecting the application for condonation of delay taking into account the order dated 10.01.2022 passed by the Supreme Court in the Suo Motu Writ Petition (C) No.3/2020. This Court finds it very pertinent to take note of that in paragraph 5 of the said order passed by the Supreme Court, it was categorically

observed that the period from 15.03.2020 till 28.02.2022 shall be excluded for the purpose of limitation as may be prescribed under the general or special laws in respect to all judicial and quasi-judicial proceedings. It was further stipulated that in case where the limitation would have expired during the period between 15.03.2020 to 28.02.2022, notwithstanding, the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

4. In the instant case, if this Court takes note of the judgment and decree which was put to challenge in Title Appeal No.5/2022, it would transpire that the judgment and decree was passed on 20.12.2021 in Title Suit No.86/2014. The appeal was filed on 25.05.2022. Taking into account the order of the Supreme Court dated 10.01.2022, this Court is of the opinion that the appellant herein would have been entitled to a period up till 31.05.2022 to file the said appeal. In the instant case, the appeal admittedly was filed on 25.05.2022 and, therefore, the same was within the period of limitation and in fact, there was no requirement, even for filing an application for condonation of delay.

5. In that view of the matter, the substantial question of law which has been formulated by this Court is duly involved in the instant appeal. Consequently, the impugned order dated 10.01.2023 passed in Misc. Case No.104/2022 as well as the consequential order dated 10.01.2023 in Title Appeal No.5/2022 are both set aside and quashed.

6. This Court further taking into account that the appellant as well as the

respondent Nos.1, 4 and 5 are duly represented before this Court, the said parties are directed to appear before the Court of the learned Civil Judge, Karimganj on 15.07.2024. Upon appearance, the learned First Appellate Court shall proceed with the disposal of the Appeal on merits.

7. This Court further finds it relevant to observe that as the other respondents in the instant appeal are not represented today, the Appellate Court before proceeding with the Title Appeal shall issue due notice to the said respondents in the appeal being Title Appeal No.5/2022.

8. With the above, the instant second appeal stands allowed. However, in the facts of the case, there shall be no order as to costs.

JUDGE

Comparing Assistant