

GAHC010084952018



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

Case No. : I.A.(Civil)/1463/2018

MOTILAL CHOUDHURY AND ANR
S/O LATE KRIPENDRA CHOUDHURY VILL. BAZERGHAT, P.O. BAZERGHAT,
DIST. KARIMGANJ

2: SMTI CHAYA RANI CHOUDHURY
W/O SRI MANIK BHATTACHARJEE
R/O BIVEKANANDA PALLY
P.O AND P.S. RAMKRISHNA NAGAR
DIST. KARIMAGAN

VERSUS

SRI MAKHAN LAL DEB AND 28 ORS
S/O LATE GONGESH CHANDRA DEB

2:SRI PHANI BHUSAN DEB
S/O LATE GONGESH CHANDRA DEB

3:SRI CHUNNI DEB
S/O LATE GONGESH CHANDRA DEB

4:SRI GOPAL DEB
RESPONDENTS NO.1 TO 4 SONS OF LATE GONGESH CHANDRA DEB .VILL
AND P.O. BAZARGHAT
P.S. RATABARI .DIST. KARIMGANJ

5:SMTI RINA DEB
W/O RONI DEB
D/O LATE GANGESH CHANDRA DEB .VILL. AND P.O. KAYASTHAGRAM
DIST. KARIMGANJ.

6:SMTI LILA DHAR
W/O SUDHIR CHANDRA DHAR

D/O LATE GANGESH CHANDRA DEB VILL.AND P.O. BAZARGHAT

PS. RATBARI DIST. KARIMGANJ.

7:SMTI PURNIMA DEB
W/O JHANTU DEB
D/O LATE GANGESH CHANDRA DEB
VILL. KALACHERA
P.O. BAZARGHAT
P.S. BAZARGHAT
DIST. KARIMGANJ
ASSAM

8:SMTI ANITA DHAR
W/O MONILAL DHAR
D/O LATE GANGESH CHANDRA DEB
VILL. MOHAMCHERRA
P.O. DULLAVCHERRA. DIST. KARIMGANJ

9:SMTI SUMITA DEY
W/O SAILESH DEY
D/O LATE GANGESH CHANDRA DEB
VILL. AND P.O. ANIPUR
DIST. KARIMGANJ.

10:SMTI RANI BALA DEB
W/O LATE GOPESH CHANDRA DEB
VILL. AND P.O. BAZARGHAT
P.S. RATABARI DIST. KARIMGANJ. ASSAM

11:MANIK DEB
S/O LATE GOPESH CHANDRA DEB

12:MOLOY KANTI DEB
S/O LATE GOPESH CHANDRA DEB

13:AJOY DEB
S/O LATE GOPESH CHANDRA DEB

14:NIRMAL DEB
RESPONDENTS NO.11TO 14 ARE THE SONS OF LATE GOPESH CHANDRA
DEB
VILL AND P.O. BAZARGHAT
P.S. RATABARI
DIST. KARIMGANJ

15:SMTI RATNA DEB

W/O NILU DEB
D/O LATE GANGESH CHANDRA DEB
VILL. AND P.O. BAZARGHAT
P.S. RATABARI
DIST. KARIMGANJ.

16:SMTI BIVA DEB
W/O KARUNA DEB
D/O OF GOPES CHANDRA DEB
VILL AND BALIPIPLA

PATHEKANDI
DIST. KARIMGANJ ASSAM .

17:SMTI JHARNA DEB
W/O LATE BABUL DEB

18:SRI RAHUL DEB
S/O LATE BABUL DEB

19:SMTI MAMON DEB
D/O LATE BABUL DEB

20:BIMAL DEB
S/O LATE PRANASH DEB
RESPONDENT 17 TO 20 ARE THE RESIDENCE OF VILL. AND P.O.
BAZERGHAT
P.S. RATABARI
DIST. KARIMGANJ.

21:SMTI MIRA DEB
W/O BISHU DEB
VILL. AND P.O. NIVIA BAZARGHAT

P.S. RATABARI
DIST. KARIMGANJ.ASSAM

22:SMTI MITRA DEB
W/O SRI RONEE DEB D/O PARESH CHANDRA DEB
VILL AND P.O. ANIPUR
DIST. KARIMGANJ

23:SMTI RANI BALA DEB
W/O LATE DINESH CHANDRA DEB

24:NANI DEB
S/O LATE DINESH CHANDRA DEB

25:JHANTU DEB
S/O LATE DINESH CHANDRA DEB

26:MINTU DEB
S/O LATE DINESH CHANDRA DEB

27:NANTU DEB
RESPONDENT NO .23 TO 27 ARE THE S/O LATE DINESH CHANDRA DEB.
RESIDENT OF DURGA NAGAR
AGARTALA
TRIPURA

28:SMTI BANI DEB
W/O BABUL DEB
D/O DINESH CHANDRA DEB
RESIDENT OF DURGA NAGAR
AGARTALA
TRIPURA.

29:SMTI PAMPARANI DEB
W/O SIBUL DEB
D/O PARESH CHANDRA DEB

VILL AND P.O. LALCHERRA
DHARMANAGAR
TRIPUR

Advocate for the Petitioner : MR. P K ROY, MS. M DUTTA,MR A CHAKRABORTY,MR. S K CHAKRABORTY

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

16.08.2024

Heard Mr. P.K. Roy, learned Senior counsel assisted by Ms. M. Dutta, learned counsel for the applicants and also heard Mr. A.R. Talukdar, learned counsel for the respondent Nos.1 and 2.

Mr. Roy, learned Senior counsel for the applicants submits that the applicants have caused service of notice upon the respondent Nos.3 to 28 by substituted mode through paper publication and submitted one affidavit dated 24.05.2024 and as such the notice deemed to have been served upon them. It appears that the notice was duly published in two local daily newspapers, one in Prantajyoti Dainik published from Silchar and another in Northeast Express. Yet, the respondent Nos.3 to 28 chooses not to contest this application.

It is submitted at the Bar that since service has already been completed, the matter may be heard. Accordingly, both the parties are heard.

This application under Section 5 of the Limitation Act for condonation of delay of 81 days in filing connected second appeal against the judgment and decree dated 23.06.2017 passed by the learned Civil Judge, Karimganj, in Title Appeal No.27/2016. It is to be noted here that vide aforementioned judgment and decree 23.06.2017, the learned Civil Judge, Karimganj, has affirmed the judgment and decree dated 27.07.2016 passed by the learned Munsiff No.2, Karimganj, in Title Suit No.8/2009.

The learned Senior counsel for the applicants submits that the wife of the applicant No.1 was suffering from ailment of her eyes and also on account of long puja vacation the counsel was out of station, for which the applicants could not contact him and that the delay here in this case is not deliberate, but it is circumstantial and the same has been explained in paragraph 2 of the application and that there is arguable point in the appeal and therefore, it is contended to condone the delay.

On the other hand, Mr. Talukdar, learned counsel for the respondent Nos.1 and 2 submits that he has no objection in the event of condoning the delay of 81 days in filing connected regular second appeal.

Having heard the submission of learned Advocates of both the parties, I have carefully gone through the application specially the statement and averment made in paragraph 2 of the application. And it appears that the delay has been explained

sufficiently here in this application, the delay is not deliberate and intentional but circumstantial and therefore, this Court is inclined to condone the same.

In terms of above, I.A. stands disposed of.

Registry to register and number the connected appeal and list the same before this Court.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant