

GAHC010215032023



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

I.A.(Civil)/1592/2022

SMITA ROY @ BURI ROY AND ANR.
D/O LATE PANNALAL ROY

RESIDENT OF 1C 401 TRISHUL
SEVEN BUNGLOWS
ANDHERI WEST MUMBAI
MAHARASTRA
400053

2: SMTI PUJA ROY @ SRUTI ROY
D/O LATE PANNALAL ROY

RESIDENT OF 1C 401 TRISHUL
SEVEN BUNGLOWS
ANDHERI WEST MUMBAI
MAHARASTRA
400053

PRESENTLY RESIDING AT 25-4625 AVENUE BOURRET
MONTREAL H3W 1K9

QC
CANADA
VERSUS

SIMA ROY AND ANR.
D/O LATE PRANESH ROY
RESIDENT OF NILMONI ROAD
WARD NO. 08
PS AND DIST KARIMGANJ
ASSAM 788710

2:SRI CHANDAN KUMAR ROY
S/O LATE PRANESH ROY
RESIDENT OF NILMONI ROAD
WARD NO. 08

PS AND DIST KARIMGANJ
ASSAM 788710

Advocate for : MR. A C SARMA
Advocate for : MR. O LASKAR appearing for SIMA ROY AND ANR.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

22.03.2024

This is an application under Section 5 of the Limitation Act for condoning the delay of 901 days in preferring the appeal against the judgment and order passed by the learned District Judge Karimganj in Probate Title Suit No.65/2014 arising out of Misc. Testamentary Case No.15/2014.

2. The grounds which has been mentioned in the instant application is that the applicant No.1 resides at Mumbai and the applicant No.2 presently resides at Montreal, Canada. The applicants did not get any notice about the said Probate Title Suit No.65/2014 and only on 01.10.2021 came to learn about the granting of probate in favour of the opposite party No.1 from the maternal uncle of the applicants. Immediately thereupon, steps were being taken as stated in paragraph 7 of the instant application and in that process, the appeal was only filed on 19.05.2022 which had occasioned a delay of 901 days.

3. This Court has also taken note of the order passed by the Supreme Court on 10.01.2022 whereby the period of limitation was enlarged up till 28.02.2022.

4. This Court has also heard Mr. O Laskar, the learned counsel appearing on behalf of the opposite party who submitted that as to whether the applicants had not received the notice, which was published in terms with Order V Rule 20 can only be seen from the advertisement which was made. He further submitted that this is a fit case where the applicant ought to have approached the Court of the learned Civil Judge, Karimganj rather than filing the instant appeal. He submitted that he has no objection in condoning the delay, but, however, while doing so, the grounds for condoning the delay should not prejudice the defence of the opposite party in the connected testamentary appeal.

5. This Court having given a due consideration of the matter is of the opinion that an Appeal is a valuable statutory right and from the materials on record, it *prima facie* appears that the applicants only came to learn on 01.10.2021. But, however, to know the said aspect of the matter and as to how the summons were duly effected it would be required to peruse materials on record in the Probate Title Suit No.65/2014, which, however, this Court cannot do unless the accompanying testamentary appeal is taken on board by this Court.

6. Accordingly, this Court condones the delay of 901 days in preferring the accompanying appeal. However, it is clarified that the condonation of delay herein shall not prejudice the defence of the opposite party, who is the respondent in the accompanying appeal.

7. With the above, the instant interlocutory application stands allowed subject to the above observations.

8. The Registry shall register the accompanying appeal and list the matter on 05.04.2024.

9. Interlocutory application stands disposed of

JUDGE

Comparing Assistant