

GAHC010170692024



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

Case No. : I.A.(Civil)/1860/2024

ON THE DEATH OF PANKAJ KUMAR DAS @ PANKAJ DAS HIS LEGAL HEIRS
PUTUL DAS AND ORS
W/O LATE PANKAJ KUMAR DAS
R/O LANKA TOWN
WARD NO. 6
P.O. LANKA
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782446

2: SRI BIJOY DAS
S/O LATE PANKAJ KUMAR DAS
R/O LANKA TOWN
WARD NO. 6
P.O. LANKA
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782446

3: SMTI MISTU DAS
D/O LATE PANKAJ KUMAR DAS
W/O SRI BIKASH DAS
R/O NEAR PROMUDINI GUEST HOUSE
C/O LT. GOBINDA MPAUL
LOWER JAIL ROAD
SHILLONH
EMGHALAYA
PIN 793001.

4: SRI BINOY DAS
S/O LATE PANKAJ KUMAR DAS
R/O LANKA COLLEGE ROAD

WARD NO. 6
P.O. LANKA
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782446

5: SRI DEBASISH DAS
S/O LATE PANKAJ KUMAR DAS
R/O LANKA COLLEGE ROAD
WARD NO. 6
P.O. LANKA
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782446

VERSUS

SMTIMADHABI MAZUMDER
W/O SRI HARI MAZUMDER
R/O LANKA TOWN
WARD NO. 6
P.O. LANKA
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782446

Advocate for : MR. P S DEKA
Advocate for : MR P C DEY appearing for SMTIMADHABI MAZUMDER

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

30.08.2024

Heard Mr. B.K. Bhagawati, learned counsel for the applicants and Mr. P.C. Dey, learned counsel for the opposite party.

2. This application, under Section 5 of the Limitation Act, 1963 is

preferred by the applicants for condonation of delay of 662 days in filing the setting aside abatement petition.

3. It appears that the applicants have preferred a regular second appeal before this court, challenging the judgment dated 23.12.2015 and decree dated 06.01.2016, passed by the learned Additional District Judge No. 3, Nagaon in Title Appeal No. 06/2015, affirming the judgment and decree dated 23.02.2015, passed by the learned Civil Judge, Nagaon in Title Suit No. 57/2010.

4. Mr. Bhagawati, learned counsel for the applicants submits that during the pendency of the aforesaid second appeal, the sole appellant of the connected appeal suffered demise on 13.01.2020, leaving behind the present applicants as legal heirs and successors. Mr. Bhagawati further submits that the engaged counsel of the appellant also suffered demise during that pendency and as such, the accompanying appeal could not be filed within the period of limitation for reasons beyond the control of the applicants and therefore, the delay of 662 days occurred in filing the accompanying appeal and therefore, it is contended to allow the application.

5. On the other hand, Mr. Dey, learned counsel for the opposite party submits that no sufficient cause has been given for the delay of 662 days in filing the accompanying appeal and therefore, it is contended that the I.A. ought not to be condoned.

6. I have given my prudent consideration to the arguments made by the learned counsel for the applicants and also perused the grounds of delay averred in the instant interlocutory application.

7. Paragraph nos. 4 - 14 of the instant interlocutory application is

reproduced hereunder for ready reference:-

- “4. That the applicants beg to state that the original appellant Late Pankaj Kumar Das during his lifetime was all along dealing with the affairs of the present second appeal and used to maintain communication with the engaged counsel at Guwahati as and when necessary, however, during that period the present applicants were not at all aware of the status of the present case and the details regarding the engaged counsel at Guwahati.
5. That the applicants beg to state that Late Pankaj Kumar Das expired on 13/01/2020 and a few months later the COVID-19 lockdown was imposed. During this pandemic period, no effective steps could be taken before the Hon'ble Court for filing necessary applications for substitution, etc.
6. That the applicants beg to state that Late Pankaj Kumar Das was survived by the present applicants, but due to his sudden death, the family suffered financial difficulty and hardship. That the applicant no. 1 i.e. the wife of the appellant, is a senior citizen who is a housewife without proper education and since long she has been suffering for various ailments in the form of heart disease,

respiratory problems, diabetes, thyroid disorder, allergies, arthritis, etc. That the applicant no. 2 is the eldest son and an employee of the Railway Protection Force. That the applicant no. 3 is the daughter of the original appellant and she stays with her husband at their matrimonial home in Shillong, Meghalaya. The applicant no. 4 is the second son who is presently unemployed and does not possess financial resources to handle the case. That the applicant no. 5 is the youngest son who is pursuing his studies.

7. That the applicants beg to state that due to the dire financial situation and household problems faced by the family of the applicants, the entire burden of the family and financial responsibility shifted upon the sole bread earner of the family i.e. the applicant no. 2 (Sri Bijoy Das) who has been serving in the Railway Protection Force (RPF) in the rank of Constable, and since 2016 he has been stationed at Tinsukia district.
8. That the applicants beg to state that from 04/04/2022 to 18/11/2022 the applicant no. 2 was in Delhi undergoing training as part of his service requirements, and after completion of the said training, the applicant no. 2 went back to his place of posting at Tinsukia.

9. That the applicants beg to state that in the month of February, 2023, when the applicant no. 2 went to his native place at Lanka, Hojai, and after going through the case file maintained by his deceased father, he was able to obtain the details regarding the present case and information about the then engaged advocate at Guwahati i.e. Mr. G.C. Phukan, and accordingly he tried to contact the phone number of the said advocate, in order to inform him about the death of Late Pankaj Kumar Das, but he could not reach him over phone.
10. That the applicants beg to state that thereafter the applicant no. 2 decided to come to Guwahati in the first week of March, 2023, to meet the then engaged counsel Mr. G.C. Phukan. However, after coming to Guwahati and enquiring about the said advocate, he could come to learn that said Mr. G.C. Phukan, had passed away in the year 2019. Subsequently, after further enquiry, the applicant no. 2 came to know about the junior advocate who was assisting said Mr. G.C. Phukan, in the present case. Accordingly, the applicant no. 2 met with the said advocate, and informed him about the death of the appellant i.e. Late Pankaj Kumar Das by providing all necessary documents and instructed him to file appropriate applications

before the Hon'ble Court. That again on 31/03/2023, the applicant no. 2 sent some further documents in the WhatsApp number of said advocate.

11. That the applicants beg to state that thereafter in the month of April, 2024, the applicant no. 2 came to Guwahati in order to meet the advocate and to enquire about the status of the case. However, after meeting the said advocate, the applicant no. 2 was shocked to learn that no applications for substitution, etc. had been filed even after providing all documents and giving specific instructions to that effect. Thereafter, on 03/05/2024, after obtaining a certified copy of the order dated 21/02/2024, the applicant no. 2 could come to know that no information about the death of the deceased appellant Late Pankaj Kumar Das was conveyed by the said advocate to the Hon'ble Court when the matter was last listed on 21/02/2024.
12. That the applicants beg to state that being dissatisfied the applicants thereafter in the first week of May, 2024, requested the said advocate to handover the brief of the case and accordingly on 08/05/2024, the applicants were able to obtain the brief of the case along with an N.O.C from the said advocate.

13. That the applicants beg to submit that the applicants thereafter met the present counsels at Guwahati and handed over the brief of the case, and took some time to arrange the money for filing the necessary applications and also provided the requisite documents as well as vakalatnama and instructed the said newly engaged counsels to do the needfull for substituting the names of the present applicants. That subsequently, the present engaged counsels took some time to prepare the necessary applications for substitution, setting aside abatement and the present delay condonation, and accordingly all these applications have been filed before this Hon'ble Court.
14. That the applicants humbly beg to submit that due to facts and circumstances explained above and in view limitation guidelines and direction passed on 10/01/2022 in Misc. Application No. 21/2022 by the Apex Court In Re: Cognizance For Extension Of Limitation (2022 3 SCC 117), there is a delay of 661 days in filing the connected setting aside abatement petition, hence the present application has been filed to condone the said delay and thereafter this Hon'ble Court may be pleased to set aside the abatement and

accordingly the names of the applicants may be duly substituted as appellants in place of the deceased appellant, Late Pankaj Kumar Das.”

- 8.** In view of above, it is apparent that without any intention and beyond the control of the applicants the delay of 662 days had occurred in filing the accompanying appeal. It also appears that the explanations given for the said delay of 662 days is sufficient and bona fide.
- 9.** Accordingly, the delay of 662 days is condoned.
- 10.** In terms of above, this application stands disposed of.
- 11.** The Registry shall list the connected appeal on 16.09.2024.

Comparing Assistant

JUDGE