

GAHC010109472022



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

Case No. : I.A.(Civil)/1808/2022
In Review Pet. No.6783/2022

ANOWARA BEGUM AND 6 ORS.
W/O- NOOR ISLAM, R/O- NALGAL DHOWA, MOUZA- SAIDARIA, P.S.
RUPAHIHAT, DIST. NAGAON, ASSAM

2: MUSTT. MAZIDA BEGUM @ MOJIDA KHATUN
W/O- MD. ISMAIL
R/O- NO. 8 UDALI
THANA- LANKA
DIST. NAGAON
ASSAM

3: MUSTT. MONOWARA BEGUM @ MONOWARA
W/O- LATE SAMSUDDIN
R/O- KANDHULIMARI
MOUZA- ALITANGANI
DIST. NAGAON
ASSAM

4: MUSTT. SAHIDA BEGUM
W/O- MAINUL HAQUE
R/O- TELIAPATHAR
MOUZA AND P.S. JURIA
DIST. NAGAON
ASSAM

5: MD. HEDAYAT ULLAH
S/O- LATE ABDUL RASHID
R/O- VILL.- KANDHULIMARI
MOUZA- ALITANGANI
DIST. NAGAON
ASSAM

6: ABDUL RAFIQUE

S/O- MD. SAMSUDDIN
R/O- VILL.- KANDHULIMARI
MOUZA- ALITANGANI
DIST. NAGAON
ASSAM

7: ABDUL MANNAF @ A. MANNAN
S/O- MD. SAMSUDDIN
R/O- VILL.- KANDHULIMARI
MOUZA- ALITANGANI
DIST. NAGAON
ASSA

VERSUS

MD. ABDUL SAMAD
S/O- LATE HAJI SHAIKH IMAN ALI MANDAL @ HAJI MD. IMAN ALI @
IMAN ALI HAJI, R/O- KANDHULIMARI, MOUZA- ALLITANGANI, DIST.
NAGAON, ASSAM

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

07-02-2024

Heard Mr. H. Das, learned counsel for the applicant. Also heard Mr. R. Ali, learned counsel appearing for the legal heirs of Lt. Abdul Samad.

This is an application under Section 5 of the Limitation Act, 1963 praying for condonation of delay of 387 days in preferring the connected review of appeal.

RSA No. 161 of 2002 was dismissed for default in the 2013 and Abdul Samad was the respondent in the said appeal. Thereafter, the said appeal was resorted to file on 25.02.2019. Again the appeal was dismissed vide order dated 25.02.2019. Now, after a delay of 387 days a review petition has been filed against the order dated 25.02.2019.

Mr. Ali, the learned counsel submits that Abdul Samad died on 07.08.2010 and at that time, the appeal was not in existence.

Mr. Ali further submits that Order 22 of the Code of Civil Procedure speaks about pendency of a proceeding where the legal heirs of a deceased party can be impleaded in this case. Even though this Court had directed substitution of a legal heir of Abdul Samad in an earlier occasion.

Mr. Das also agreed that at the time of death of Abdul Samad, there was no pending proceeding in the Court. Therefore, there cannot be any question of substitution of his legal heir in any proceeding.

I have considered the submissions made by the learned counsels for both sides.

This Court is of the opinion that at the time of death of Abdul Samad, no proceeding was pending in the Court. Therefore, there cannot be substitution of his legal heirs in any proceeding.

This Court is of the opinion that the present application for condonation of delay for acceptance of the review application is not maintainable in law.

Accordingly, the present IA stands dismissed.

JUDGE

Comparing Assistant