

GAHC010112292024



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

Case No. : I.A.(Civil)/1753/2024

ON THE DEATH OF KAMAL BORA
HIS LEGAL HEIRS SUSILA BORAH AND ANR

1.1: SMT. SUSILA BORAH
WIFE OF LATE KAMAL BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 4

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.

1.2: MRS. DRISTRITA BORAH

DAUGHTER OF LATE KAMAL BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 4

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,

LAND AND REVENUE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
NAGAON DISTRICT
ASSAM.

3:SOURAV BORAH
SON OF LATE KIRAN CH. BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 3

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.

4:SUMITRA BORAH
SON OF LATE KIRAN CH. BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 3

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.

5:SAMARENDRA BORAH
SON OF LATE KIRAN CH. BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 3

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM

Advocate for the Petitioner : MS M DAS

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 14.06.2024

Heard Mr. D. K. Nath, learned counsel for the applicant. Also heard Ms. N. Bordoloi, learned Standing Counsel for the respondent No. 1, Mr. K. Gogoi, learned Senior Government Advocate for respondent No. 2 and Mr. D. Mahanta, learned counsel for appearing for respondent No. 3, 4 and 5.

This is an application for condoning 10 days delay in filing application for setting aside abetment in substituting the legal heirs and deceased writ petitioner No. 1.

Heard and perused the averments made in respect of the condonation application.

Paragraph 2, 3, 4 and 5 of the condonation application is reproduced hereunder for ready reference:-

2. That the applicants state that during the pendency of the writ petition, the petitioner No. 1 expired on 26/10/2023 and on the death of Kamal Bora, the petitioner No.1's right to sue in the writ petition survives upon the applicants.

3. That the applicants state that after expiry of the petitioner No. 1, the applicants applied for the death certificate and obtained the same on 7/11/23. But due to ill health of the applicant No. 1 had to go to Delhi for treatment and could return from Delhi on 10th March 2024. Immediately

after returning, she had handed over the death certificate to the advocate on 14/3/24 to file the substitution petition. But the advocate also remains out of station from 15/3/24 to 28/3/24.

4. That, the advocate could prepare the same and filed on 2/4/24 the petition for substitution along with one petition for setting aside the abetment along with the present condonation petition.

5. That the present Application should have filed the petition for substitution on or before 23.01.2024 (90 days from death). Failing which the Petitioner should have filed an separate application for setting aside the abetment on or before 23.03.2024 (another 60 days from the last date of filing substitution petition). Hence there is a delay of 10 days in filing the abetment petition before this Hon'ble Court. Hence the Petitioner has filed the instant interlocutory application for condoning the delay of 10 days in filing the application for setting aside the abetment.

A perusal of the aforesaid averments indicate that the petitioner has made out a sufficient cause for condoning delay occurred.

Accordingly 10 days delay is condoned.

IA stands allowed.

Disposed of.

JUDGE

Comparing Assistant