

GAHC010113042023



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

Case No. : I.A.(Civil)/1442/2023

BORGAON L P SCHOOL AND 2 ORS.
REPRESENTED BY SRI LAKHYADHAR DEKA ,PRESIDENT, SCHOOL
MANAGING COMMITTEE

2: PRABIN AKHTAR RAHMAN
SECRETARY CUM HEADMASTER BORGAON L.P SCHOOL
RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSAM

3: SRI GOTIRAM DEKA
MEMBER
SCHOOL MANAGING COMMITTEE
RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSA

VERSUS

BHAGAWAN DEKA AND 6 ORS.
S/O LATE KALIRAM DEKA,
RESIDENT OF VILLAGE BORGAON, PO DORAKOHO RA PS KAMALPUR,
DIST KAMRUP , ASSAM

2:SRI KRISHNA DEKA
S/O LATE KALIRAM DEKA

RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSAM

3:SRI GUNA RAM DEKA
S/O LATE KALIRAM DEKA

RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSAM

4:SRI SAMINDRA DEKA
S/O LATE KALIRAM DEKA

RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSAM

5:SRI PADMARAM DEKA
S/O LATE KALIRAM DEKA

RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSAM

6:SRI AATIRAM DEKA
S/O LATE KALIRAM DEKA

RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSAM

7:SRI CHANDRADHAR DEKA
S/O LATE KALIRAM DEKA

RESIDENT OF VILLAGE BORGAON
PO DORAKOHO RA PS KAMALPUR
DIST KAMRUP
ASSAM

8:SECRETARY/COMMISSIONER OF ELEMENTARY EDUCATION

GOVT. OF ASSAM
DISPUR GUWAHATI 06
KAMRUP M ASSAM

9:MISSION DIRECTOR OF SARBA SIKHSHA ABHIJAN
GOVT. OF ASSAM

10:DIRECTOR OF ELEMENTARY EDUCATION

ASSAM KAHILIPARA
GUWAHATI 19
KAMRUP M ASSAM

11:BLOCK ELEMENTARY EDUCATION OFFICER

AMINGAON
KAMRUP ASSAM

12:DEPUTY INSPECTOR OF SCHOOLS

KAMRUP
AMINGAON
ASSA

For the Petitioner(s) : Mr. B. Kaushik, Advocate

For the Respondent(s) : Mr. B. C. Talukdar, Advocate
: Mr. K. Talukdar, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 29.04.2024

1. This is an application under Section 5 of the Limitation Act, 1963 for condoning the delay of 2670 days in preferring the accompanying second appeal against the judgment and decree dated 13.11.2013 passed by the learned Civil Judge, No.3, Kamrup (M) in Title Appeal No.11/2012.

2. A perusal of the materials on record shows that the Applicants duly knew about the said judgment and decree. A stand was taken to that effect that the counsel who was conducting the case had wrongly advised the Appellants not to

prefer an Appeal. It was further mentioned that the local public who constituted the Managing Committee of the School assailed the said judgment and decree dated 13.11.2013 in Title Suit No.08/2015 before the Court of the learned Munsiff, Rangia on the ground that the decree has been obtained fraudulently. Upon dismissal of the suit being Title Suit No.8/2015, now the Appellants have been advised to prefer a Second Appeal against the judgment and decree dated 13.11.2013 in Title Appeal No.11/2012 and in that regard, there has been a delay of 2670 days in preferring the appeal.

3. The Supreme Court recently in a judgment in the case of ***Pathapati Subba Reddy (Died) by LRs and others Vs. Special Deputy Collector (LA) reported in 2024 SCC OnLine SC 513***, after making a copious detail of all the well settled precedents had summarized the principles for condoning the delay. Paragraph 26 of the said judgment being relevant is quoted herein below:

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind, but the same cannot be used to defeat the substantial law of

limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

4. Keeping in mind the above principles of law and hearing the learned counsels for the parties, the question which arises is as to whether the delay of 2670 days is required to be condoned on the ground that the counsel having not advised the Appellants to prefer an appeal. It is well settled that ignorance of law cannot be an excuse. In addition to that, it was not the Appellants who filed the suit challenging the judgment and decree dated 13.11.2013. Under such circumstances, the cause which have been shown, in the opinion of this Court is not sufficient for condoning the delay of 2670 days in preferring the accompanying appeal.

5. Accordingly, the instant application being meritless is dismissed.

6. The consequential effect of dismissal of the instant application for condoning the delay is that the accompanying appeal so filed against the

judgment and decree dated 13.11.2013 in Title Appeal No.11/2012 have become barred by limitation and accordingly cannot be entertained.

JUDGE

Comparing Assistant