

GAHC010149242024



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

Case No. : I.A.(Civil)/2282/2024

ON THE DEATH OF RAM NARAYAN SARMAH @ MISTRY HIS LEGAL HEIRS
JANKI DEVI AND 8 ORS

W/O- LATE RAM NARAYAN SARMAH @ MISTRY, R/O- DHEKIAJULI TOWN,
WARD NO. 2, P.O. AND P.S. DHEKIAJULI, DIST. SONITPUR, ASSAM

2: MONISANKAR SARMAH

S/O- LATE RAM NARAYAN SARMAH @ MISTRY

R/O- VILL.- BHALUKDHARA DHEKIAJULI

P.O. AND P.S. DHEKIAJULI

DIST. SONITPUR

ASSAM

3: SIV SANKAR SARMAH

S/O- LATE RAM NARAYAN SARMAH @ MISTRY

R/O- MOINAJULI

DHEKIAJULI

P.O. AND P.S. DHEKIAJULI

DIST. SONITPUR

ASSAM

4: UMA SANKAR SARMAH

S/O- LATE RAM NARAYAN SARMAH @ MISTRY

R/O- MISSAH

NAGAON

ASSAM

5: TINKU SARMAH @ TINKU SHANKAR SARMAH

S/O- LATE RAM NARAYAN SARMAH @ MISTRY

R/O- DHEKIAJULI TOWN

WARD NO. 2

P.O. AND P.S. DHEKIAJULI

DIST. SONITPUR

ASSAM

6: PRADIP SARMAH
S/O- LATE RAM NARAYAN SARMAH @ MISTRY
R/O- DHEKIAJULI TOWN
WARD NO. 2
P.O. AND P.S. DHEKIAJULI
DIST. SONITPUR
ASSAM

7: KIRAN SARMAH
W/O- PANKAJ SARMAH
R/O- BAMUNIMAIDAN
GUWAHATI
DIST. KAMRUP(M)
ASSAM

8: PRATIMA SARMAH
W/O- SRI RANJIT SARMAH
R/O- DHEKIAJULI TOWN
WARD NO. 2
P.O. AND P.S. DHEKIAJULI
DIST. SONITPUR
ASSAM

9: SANGITA SARMAH
W/O- SRI UPENDRA SARMAH
R/O- P.O.MAHUWA CHOWK
DIST. HAJPUR
BIHAR

VERSUS

RAM KUMAR MISTRY AND ANR
S/O- LATE MUNSI MISTRY, R/O- DHEKIAJULI TOWN, WARD NO. 2, P.O. AND
P.S. DHEKIAJULI, DIST. SONITPUR, PIN- 784110, ASSAM.

2:SUDIR KUMAR MISTRY
S/O- LATE SUDARSHAN MISTRY
R/O- MOILA ALI
SIRAJUL DHEKIAJULI
P.O. AND P.S. DHEKIAJULI
DIST. SONITPUR
ASSA

Advocate for the Petitioner : MR. B HALDAR, MR G BHARADWAJ,MR B DEORI

Advocate for the Respondent : MR. A GANGULY(R- 1,2), MR. A DHANUKA(R- 1,2)

**BEFORE
HONOURABLE MR. JUSTICE K. SEMA**

ORDER

Date : 05-11-2024

Heard Mr. A.C Sharma, learned Sr. counsel assisted by Mr. G. Bharadwaj, learned counsel for the applicant and Mr. A. Ganguly, learned counsel for the opposite party/respondents.

The present application has been filed under section 5 of the Limitation Act for condoning the delay of 264 days in filing the connected revision petition against the judgment & order dated 03/08/2023 passed by the learned District Judge, Sonitpur in Title Appeal No. 2/2021.

Explaining the reasons for the delay, Mr. A.C Sharma, learned Sr. counsel has taken this Court to paragraph-7 & 8 of the application which is reproduced herein below;

“7. That the applicants beg to state that impugned Judgment and Order was passed by the learned lower appellate court on 03-08-2023 and the revision petition was supposed to file on or before 03-11-2023. The father of the applicants was taking step in the Title Appeal No. 02/2021. The father of the applicants, namely, Ram Narayan Sarmah @ Mistry, has died on 18-02-2022 and after his death on being informed to the engaged Counsel of Sonitpur he took step for bringing all the legal heirs of Ram Narayan Sarmah @ Mistry on the record of Title Appeal No. 02/20221. After death of Ram Narayan Sarmah his son, Tinku Sarma (applicant No. 5) was entrusted to take step in the case by the other legal heirs of the Ram Narayan Sarmah. The applicant thereafter No. 5 was called by their engaged Advocate in Sonitpur to meet him on 03-07-2023 immediately 2 days before the date of argument of the appeal. The applicant No. 5 thereafter met his counsel and paid the required fee for hearing of the case and he was told that the engaged counsel would inform him the result of the case. The applicant No. 5 was in an impression that his engaged Counsel was taking step in the case and would inform the applicant No. 5 but the result has come differently when the applicant No. 5 was served with a summon on 28-06-2024 from the Court of Civil Judge (Jr. Div) No. 1, Sonitpur of a case being Title Execution No. 07/2021 fixing 16-07-2024 for report. The applicants

after receipt of summon on 28-06-2024 of the said case met their engaged Counsel and the said Advocate in Sonitpur later on informed the applicants on 30-06-2024 about dismissal of Title Appeal No. 02/2021 on 03-08-2023 citing that the engaged Counsel could not inform the applicant No. 5 about the case immediately as he had to undergone various treatment including one major surgery. Thus, the applicants have come to know about the impugned judgment only on 30-06-2024.

8. That the applicants beg to state that he thereafter on 04-07-2024 went to the Court and engaged one Advocate's clerk to get the certified copy of the impugned judgment along with other documents related to the case. The said Advocate's Clerk applied for the certified copy of the judgment & order on 06-07-2024 and got the copy on 12-07-2024. The applicant and one cousin brother of the applicants came to Guwahati and met the present Advocate on 15-07-2024, and handed over the papers of the case for preferring appeal in the High Court. The present Advocate took some time to prepare the instant revision petition and connected interlocutory application. The revision petition has been filed on 23-07-2024 and there has been delay of 264 days in preferring the revision petition."

The learned Sr. counsel has accordingly submitted that there is no deliberate or intentional delay on the part of the applicant and the delay, even if any, has been satisfactorily explained. The learned Sr. counsel accordingly submits that the delay of 264 days in preferring the connected revision petition may be condoned.

Mr. A Ganguly, learned counsel for the opposite party on the other hand, objecting to the application for condonation of the delay has relied on the averments made in paragraph-4, 5, 6 & 7 of the written objection which is reproduced herein below;

"4. That in reply to paragraph 7 of the Interlocutory Application, the answering deponent does not deny that Ram Narayan Sarmah @ Mstry died on 18.02.2022 and subsequently his legal heirs were brought on record in T.A. No. 02/2021. This deponent demes the alleged facts and circumstances which have been described in the paragraph under reply, as these are within the knowledge of the Applicant and/or their engaged counsel. It is strongly denied that the engaged counsel of the Applicant only informed the Applicant about the Judgment and Order dated 03.08.2023 on 30.06.2024. The Applicant had not revealed the name of their Ld. Engaged counsel who allegedly did not inform them about the Judgment dated 03.08.2023 claiming to have undergone various treatment including surgery. The Applicant himself who are 9 (nine) in

number have not cared to explain as to why they did not make any effort to contact their Ld. Counsel between 03.08.2023 and 30.06.2024. The Applicants had also not explained as to whether they had filed any complaint in the Bar Council of Assam for the gross professional misconduct on the part of their counsel for not informing them of the impugned judgment for a period of 10 months.

5. That in reply to paragraph 8 of the Interlocutory Application, the answering deponent states that the respondents are not aware as to the correctness of the statements alleged in the instant paragraphs and the burden lies upon the Applicants to prove the correctness of the same. These allegations are not within the personal knowledge of these respondents and hence the same are strongly denied.

6. That in reply to paragraph 9 of the Interlocutory Application, the answering deponent denies that there is no negligence or laches on the part of the Applicants to proceed with the case and it is also denied that the Applicants have sufficient cause to justify not filing the Civil Revision Petition within the prescribed period. It is further denied that the alleged right, title and interest over the valuable property of the Applicant is involved in this case. The Applicants have been occupying the suit property without paying any rent since April, 2008 and it is the answering deponent who stands to suffer serious prejudice if the delay on the part of the Applicants in filing the revision petition is condoned.

7. That in reply to paragraph 10 of the Interlocutory, the answering deponent denies that the Applicants will be highly prejudiced if they are evicted from the suit land in the course of the execution proceeding as they are running their motor garage over the suit land. The Applicants are in illegal occupation and their tenancy has long since been extinguished on account of non-payment of rent. Hence, they do not deserve any indulgence from this Hon'ble Court. "

Mr. A. Ganguly, learned counsel for the opposite party has accordingly submitted that the delay has not been properly explained and therefore, if the delay is condoned, without any proper explanation, serious prejudice will be caused to the opposite. It is further submitted that, the counsel conducting the case in the court below has been cited as one of the main reason for the delay, however, the name of the said counsel has nowhere been reflected in the application and therefore, the applicant has not been able to show sufficient cause to explain the delay.

Heard the learned counsel for the parties and also perused the averments made in the application as well as the written objection.

This Court, in the interest of justice, is inclined to condone the delay of 264 days and allow the applicant to file the connected revision petition against the judgment & order dated 03/08/2023 passed by the learned District Judge, Sonitpur in Title Appeal No. 2/2021 and allow the parties to contest the case on merit. This Court is also of the considered view that allowing the parties to contest the case on merit will prejudice neither of the parties to the dispute.

In view of the observation made above, the application for condonation of delay of 264 days in filing the connected revision petition against the judgment & order dated 03/08/2023 passed by the learned District Judge, Sonitpur in Title Appeal No. 2/2021 is allowed.

The application stands disposed.

JUDGE

Comparing Assistant