

GAHC010159192017



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

Case No. : I.A.(Civil)/162/2017

NITYANANDA ROY
S/O. LT. UPENDRA CHANDRA ROY, R/O. HADARGRAM WATIR ALI ROAD,
WARD NO. 22, KARIMGANJ TOWN, P.O., P.S. and DIST. KARIMGANJ, ASSAM.

VERSUS

SMT. JOYA ROY and 8 ORS.
W/O. LT. SATYANANDA ROY @ SATYENDRA ROY,

Advocate for the applicant(s): Mr. MH Laskar

Advocate for the respondent(s): X X

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

24.05.2024

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 581 days in preferring the accompanying civil revision petition challenging the order dated 05.01.2015 passed in Title Suit No.260/2012 whereby the plaint was returned for presenting the same before the appropriate forum in compliance with the directions of the Appellate Court of the learned Civil Judge, Karimganj vide order dated 17.06.2014 passed in Misc.Appeal No.14/2013.

2. This Court has perused the application and from a perusal thereof, it is seen that on the ground of the wife of the applicant being suffering from neuropathic breakdown, it was stated that the applicant could not file the appeal within the period of limitation.

3. It is seen that the appeal was filed along with the instant application on 25.11.2016. The order which has been impugned is an order dated 05.01.2015 passed in Title Suit No.260/2012, whereby the plaint was returned. This Court has also perused the medical certificate which is dated 02.05.2016 stating, *inter alia*, that the wife of the applicant could very well join her duties. There is no explanation whatsoever as to why after 5/6 months, thereafter, also the revision application was filed.

4. Under such circumstances, in the opinion of this Court the delay of 581 days having not been sufficiently explained, the instant application is rejected.

5. Apart from that, this Court also finds it relevant to observe that the accompanying revision petition is also not maintainable in view of the fact that an appeal lies against an order of returning of the plaint in terms with Order XLIII Rule 1(a) of the Code of Civil Procedure, 1908.

6. Taking into account the above, the instant application, therefore, stands

dismissed.

7. The consequential effect of the dismissal of the instant application is that the accompanying revision petition cannot be entertained being barred by limitation.

JUDGE

Comparing Assistant