

GAHC010183092024



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

Case No. : I.A.(Civil)/2738/2024

URBASHI BHARALI AND 2 ORS
W/O LATE KUMUD BHARALI,
RESIDENT OF BENGENAKHOWA, PO BENGENAKHOWA, MOUZA
MOUKHOWA, DIST GOLAGHAT, ASSAM 785702

2: ASHWARJYA RANI BHARALI
D/O LATE KUMUD BHARALI

RESIDENT OF BENGENAKHOWA
PO BENGENAKHOWA
MOUZA MOUKHOWA
DIST GOLAGHAT
ASSAM 785702

3: PRASURJYA RANI BHARALI
D/O LATE KUMUD BHARALI

RESIDENT OF BENGENAKHOWA
PO BENGENAKHOWA
MOUZA MOUKHOWA
DIST GOLAGHAT
ASSAM 78570

VERSUS

HEMOPROVA KAKOTY
W/O SRI NITYANANDA KAKOTY
RESIDENT OF BOKOTIAL GAON, PO SALIKHAT, MOUZA KACHARIKHAT,
DIST GOLAGHAT, ASSAM 785625

Advocate for the Petitioner : MR. K R BOROOAH,

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 22.10.2024

Heard Mr. K.R. Borooah, learned counsel for the applicants.

2. Office note dated 21.10.2024, indicates that neither A/D card nor unserved notice as well as service report has been received in respect of the sole respondent, which was issued on 12.09.2024.

3. Mr. Borooah, learned counsel for the applicants, by referring a report of the track consignment of the Postal Department, submits that the item was delivered to the addressee on 17.09.2024, but till date nobody entered appearance on behalf of the sole respondent despite of service of notice upon him.

3.1. Mr. Borooah also submits that this interlocutory application, under Section 5 of the Limitation Act, 1963, is preferred by the applicants for condonation of delay of 324 days in preferring the connected appeal against the judgment and decree dated 14.07.2023, passed by the learned Civil Judge (Senior Division), Golaghat, in Title Appeal No. 2/2019. Mr. Borooah further submits that the connected appeal could not be preferred in time and that the ground for delay is explained in paragraph Nos. 3, 4 and 5 of the application and that the delay is not intentional, rather it is circumstantial and the same has been sufficiently explained and therefore, it is contended to condone the same.

4. Having heard the submission of Mr. Borooah, learned counsel for the applicants, I have carefully gone through the application, especially paragraph Nos. 3, 4 and 5.

5. It is stated that the husband of the applicant No. 1 expired on 09.11.2020 and she came to know about the case when she received notice of a pending execution case, being Title Execution Case No. 1/2024, and though she had consulted with her earlier engaged counsel, he had stated that he is unable to file the second appeal. Thereafter, the applicants have approached the District Legal Services Authority, Golaghat, wherein the applicants were asked to apply for certified copy of the entire record and thereafter taking due approval, certified copies were forwarded to the Gauhati High Court Legal Services Authority. And as such, delay of 324 days occasioned in preferring the appeal which appears to be not intentional.

6. Considering the explanation so forthcoming from the application as well as from the submission of Mr. Borooah, learned counsel for the applicants, this Court is of the view that the delay in preferring the connected appeal has sufficiently been explained in this application and therefore, this Court is inclined to condone the delay of 324 days in preferring the connected appeal.

7. In terms of above, this I.A. stands disposed of.

8. It is provided that Registry shall register the connected second appeal and list the same before this Court, preferably on 24.10.2024.

JUDGE

Comparing Assistant