

GAHC010187792023



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

Case No. : I.A.(Civil)/2568/2023

KANCHAN BALA DAS AND 4 ORS.
W/O LATE SANURAM DAS,VILL.- PADMAPUR, P.O.- KAJALGAON, P.S.-
SIDLI, DIST.- CHIRANG, ASSAM, PIN- 783385.

2: KSHITISH CH. DAS @ KHITISH DAS
S/O LATE MAKHAN LAL DAS
VILL.- PADMAPUR
P.O.- KAJALGAON
P.S.- SIDLI
DIST.- CHIRANG
ASSAM
PIN- 783385.

3: GOLAP DAS
S/O LATE MAKHAN LAL DAS
VILL.- PADMAPUR
P.O.- KAJALGAON
P.S.- SIDLI
DIST.- CHIRANG
ASSAM
PIN- 783385.

4: GEETA RANI DAS
W/O CHARAN DAS

D/O SANURAM DAS

VILL.- PADMAPUR
P.O.- KAJALGAON
P.S.- SIDLI
DIST.- CHIRANG
ASSAM
PIN- 783385.

5: MINATI DAS
W/O SWAPAN KR. DAS

D/O LATE SANURAM DAS

R/O HARIPUR
P.O.- LALMATI
P.S.- ABHAYAPURI
DIST.- BONGAIGAON
ASSAM
PIN- 783384

VERSUS

BINOD GOYARI AND 2 ORS.
S/O LATE BANURAM GOYARI,
VILL.- PADMAPUR, P.O.- KAJALGAON, DIST.- CHIRANG, BTAD, ASSAM,
PIN- 783394. PRESENTLY RESIDING AT VILL.- POLSHBARI, P.O.-
KAJALGAON, P.S.- SIDLI, DIST.- CHIRANG, BTAD, ASSAM, PIN- 78385.

2:SEWALI SUTRADHAR
D/O LATE RABI LOCHAN SUTRADHAR

VILL.- NAMALPUR
P.O. AND P.S.- SIDLI
DIST.- CHIRANG
BTAD
ASSAM
PIN- 783373.

3:NIRANJAN SUTRADHAR
S/O LATE UDAY SUTRADHAR

VILL.- NAMALPUR
P.O. AND P.S.- SIDLI
DIST.- CHIRANG
BTAD
ASSAM
PIN- 783373

Advocate for the Petitioner : MR. M SARANIA, MR R.BEZBARUAH,MS. C NEWME,MR A SARANIA,MR. S SAIKIA

Advocate for the Respondent : MS R SAHA, MR. B J MUKHERJEE

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 19.08.2024

Heard Mr. P.P. Gogoi, learned counsel for the applicant. Also heard Mr. H. Buragohain, learned counsel for the respondent No. 1.

Order passed earlier on 03.05.2024 indicates that in terms of office note dated 20.01.2024 service in respect of respondent Nos. 2 & 3 are completed. However, there is no representation on behalf of the aforesaid respondents when the matter is called today. As such, the application is taken up for disposal.

This is an application under Section 5 of the Indian Limitation Act, 1963 for condonation of delay of 236 days occurred in filing the accompanying appeal against the judgment and decree dated 17.09.2022 passed by the Civil Judge, Chirang at Kajalgaon in T.S. No. 16/2021 decreeing the counter claim of the defendants/ respondents herein.

The case of the applicant/plaintiff is that the plaintiff has filed a suit for declaration of right, title and interest and adverse possession and cancellation of sale deed No. 75/43 of 2012 and withdrew the suit filed by them in the middle part of the year 2017 and was under the impression that the suit was totally closed. However, it came to their knowledge in the last part of the month of May, 2023 that the counter claim filed by the defendants/ respondents was proceeded as per law and the same was decreed against the plaintiff/ applicant.

Aggrieved by the aforesaid judgment and decree dated 17.09.2022, the accompanying first appeal has been preferred by the applicant. However, the delay of 236 days occurred in filing the aforesaid appeal. Accordingly, the instant application for condonation has been filed.

Mr. P.P. Gogoi, learned counsel for the applicant submits that the applicants being from the rustic background were not aware of the fact that even if a suit is withdrawn by the plaintiff the counter claim filed therein by the defendant can be proceeded as per law. It is submitted that they were unaware about the said proceeding and after coming to know about passing of the impugned judgment and decree, the appeal was filed. As such, he submits that the aforesaid delay occurred in filing the appeal against the judgment and decree dated 17.09.2022 passed by the Civil Judge, Chirang at Kajalgaon in T.S. No. 16/2021 is unintentional and because of their condition and thus the delay may be condoned.

Mr. H. Buragohain, learned counsel for the defendants/ respondents on the other hand submits that the plaintiff/ applicant is presumed to know the law of the land and the same can not be the ground for condonation.

I have given my prudent consideration to the arguments made at the bar and also perused the averments and the grounds stated in the instant condonation application.

Paragraphs 4 & 5 of the condonation application is reproduced hereunder for ready reference :-

“4. That the applicants beg to state that they have no knowledge of the judgment and decree dated 17.09.2022 passed by the learned Civil Judge, Chirang at Kajalgao, because in the middle part of the year they have withdrawn the suit filed by them and thinking that the case was closed altogether. In the last part of the month of May, 2023, the opposite party No. 1 namely, Sri Binod Gayari along with some unknown persons visited the land of the applicants and asked them to vacate the possession of the land within a week. The applicants became astonished because earlier also the said Binod Gayari tried to encroach upon the land of the applicants. Then the applicants asked him not to come to the disputed land then Binod Gayari told them that he won the land suit before the court and now he is the owner of the land so he came to take possession of the land. Immediately as the applicants resisted his move but he could not succeed his action and left the place stating

that he will come to vacate the by filing petitions before the court. Immediately within two or three days, the applicants visited the earlier engaged learned advocate of the case, Sri Amitava Roy and then only came to know that after withdraw the case filed by them the counter claim was proceeded as per law, which was not at all explained by the counsel to them. Then the applicants requested the counsel to collect the certified copy of the judgment and order dated 17.09.2022 passed by the trial court below. The copy was applied on 6.6.2023 and the counsel collected the same on 22.6.2023 and informed the applicants to come in his chamber to collect the certified copy of the judgment and order dated 17.09.2022 for filing appeal to the higher Court.

1. That the applicants state that the applicant No. 2 visited the counsel's chamber in the last week of the month of June, 2023 for collection of the certified copy of the judgment and order dated 17.09.2022. The applicant No. 2 came to know that as the value of the counter claim is high, therefore, they have to approach the Hon'ble Gauhati High Court by an appeal against the judgment and order dated 17.09.2022. As the applicants are poor and living below poverty line, they took some time to arrange some money for filing necessary fee including fee of the counsel. In the first week of the month of August, 2023 the applicants visited the chamber of the preset set counsels and requested them to file the appeal before the Hon'ble Court ad handed over the brief to the counsels. His counsels took ten (Ten) days' time to prepare the case for filing he appeal before the Hon'ble Court and asked the applicants to come to Guwahati on 14.08.2023 for swearing affidavit and signing vakalatnama etc. But due to Independence Day celebration the applicants could not come to Guwahati on that day. The applicants could only come today i.e. on 21.08.2023 for filing the appeal and hence appeal has been filed on today."

Reading of the aforesaid averments indicate that the plaintiffs/ applicants were not aware of the fact that the counter claim filed by the defendants/ respondents in the suit filed by her which she had withdrawn was still continuing. It further appear that it was only when the defendants/ respondents tried to encroach upon the land of the applicant, she came to know and thereafter she immediately contacted her advocate and obtained the certified copy of the impugned judgment and decree ad thereafter preferred the instant appeal and in the said process the delay of 236 days has occurred. It further appears that since the applicants are poor and living below poverty line, they took some time to arrange money for filing the appeal and also for payment of fees of the counsel.

In view of above, the aforesaid grounds appears to be sufficient and bonafide. As such, the delay of 236 days in filing regular First Appeal is condoned.

The I.A.(C) stands allowed.

Let Registry to register the accompanying RFA and list the same for admission.

The I.A.(C) is disposed of.

JUDGE

Comparing Assistant