

GAHC010204682023



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

**Case No. : I.A.(Civil)/31/2024**

MOHD ALAUDDIN AHMED,  
S/O LATE SAHAR ALI,  
R/O SAHAN, COLEGE ROAD,  
PO AND PS RANGIA,  
KAMRUP (R), ASSAM.

VERSUS

SYED MIZANUR RAHMAN and 2 ORS  
S/O LATE KHALILUR RAHMAN, R/O RANGIA WARD NO. 3 RANGIA TOWN,  
PS RANGIA DIST KAMRUP ASSAM PIN 781354

2:ON THE DEATH OF MOHD. ISHAQUE ALI  
REPRESENTED BY HIS LEGAL HEIRS

2.1:HAJIRA BEGUM  
W/O LATE MOHD. ISHAQUE ALI

R/O SAHAN  
COLLEGE ROAD

PO AND PS RANGIA

DIST. KAMRUP  
ASSAM

PIN 781354

2.2:IRASHA BEGUM

D/O LATE MOHD. ISAHAQUE ALI  
W/O NAZIM AHMED

R/O N.T. ROAD  
RANGIA TOWN  
NEAR MASJID

PO AND PS RANGIA

DIST. KAMRUP  
ASSAM

PIN 781354.

2.3:INAMUL HAQUE CHOUDHURY

S/O LATE MOHD. ISAHAQUE ALI

R/O SAHAN  
COLLEGE ROAD

PO AND PS RANGIA

DIST. KAMRUP  
ASSAM

PIN 781354

3:SAHABUDDIN AHMED  
S/O LATE SAHAR ALI  
R/O WARD NO. 3  
RANGIA TOWN COLLEGE GATE  
PS RANGIA PIN 781354  
DIST KAMRUP ASSA

For the Applicant(s) : Ms. Z. Mukit, Advocate

For the Respondent(s) : Mr. P. Das, Advocate

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**ORDER**

**Date : 05.04.2024**

1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 872 days in preferring the application for setting aside the abatement of the appeal in respect to the Respondent No.2 who expired on 05.12.2018.

2. This Court finds it very pertinent to observe that the Applicant who was the plaintiff filed a suit being Title Suit No.14/2010. It is relevant to take note of that the Applicant herein being the plaintiff had filed the suit claiming right of re-emption and possession over a plot of land described in Schedule-B to the plaint and for other consequential reliefs. The cause of action for the filing the said suit was that the Defendant Nos. 2 and 3 who are the Respondent Nos. 2 and 3 in the accompanying appeal had transferred the said Schedule-B land by way of registered Deed of sale in favour of the Defendant No.1 bearing Sale Deed No.2088 dated 07.09.2009. Be that as it may, the said Sale Deed was put to challenge in the said suit.

3. In the perspective of the above, let this Court now decide as to whether the delay of 872 days can be condoned. The plaintiff/applicant herein as well as the Defendant Nos. 2 and 3 are all brothers being sons of Late Sahar Ali. The Defendant No.2 i.e. the Respondent No.2 expired on 05.12.2018. The Applicant/Appellant herein very well knew about his death and did not take any steps till the filing of the instant application. It is the case of the applicant as could be seen from the application that the applicant inadvertently failed to

inform his counsel regarding the death of the Respondent No.2 and this in the opinion of this Court cannot constitute a sufficient cause for condoning the delay of 872 days.

4. Accordingly, the application seeking condonation of delay therefore stands rejected.

**JUDGE**

**Comparing Assistant**