GAHC010213682018

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

Case No. : I.A.(Civil)/3486/2018

ON THE DEATH OF ASHISH CHATTERJEE, HIS LEGAL HEIRS SMTI. RUPA CHATTERJEE AND 2 ORS.
RESIDENT OF LANKA TOWN, PS LANKA, DIST NAGAON, ASSAM

2: ARUP CHATTERJEE
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM

3: ABHIJIT CHATTERJEE
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSA

VERSUS

SITI KANTA CHOUDHURY AND 2 ORS
S/O LATE RAM LOCHAN CHOUDHURY RESIDENT OF LANKA TOWN, PS LANKA, DIST NAGAON, ASSAM

2:SHRI SUBHAS CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
782446
ASSAM

3:SHRI SABIR CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA

DIST NAGAON
782446
ASSA

Advocate for the Petitioner : MR B K SINGH

Advocate for the Respondent : MS G SUTRADHAR (R2, R3, R4)

Linked Case : RSA/278/2018

ON THE DEATH OF ASH SH CHATTERJEE HIS LEGAL HEIRS
S/O LATE KALIPADA CHATTERJEE
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM

1.1: SMTI RUPA CHATTERJEE
AGE 50 YRS.
WIFE OF LT. ASHISH CHATTERJEE
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM

1.2: SHRI ARUP CHATTERJEE
AGE-19 YRS

SON OF LATE ASHISH CHATTERJEE

RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM

1.3: SHRI ABHIJIT CHATTERJEE
AGE-21 YRS. SON OF LATE ASHISH CHATTERJEE

RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM
VERSUS

SHRI SURENDRA CHOUDHURY AND 3 ORS
S/O LATE RAM LOCHAN CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM

2:SHRI SITI KANTA CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
782446
ASSAM
3:SHRI SUBHAS CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
782446
ASSAM
4:SHRI SABIR CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
782446
ASSAM

Advocate for : MR B K SINGH
Advocate for : MS G SUTRADHAR (R2
R3
R4) appearing for SHRI SURENDRA CHOUDHURY AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

18.03.2024

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 327 days in preferring the accompanying second appeal against the judgment and decree dated 17.06.2017 passed by the Additional District Judge, Nagaon in Title Appeal No.12/2013 whereby the appeal was dismissed.

2. From a perusal of the materials on record, it reveals that the judgment and decree was passed on 17.06.2017 and at that relevant point of time, the original applicant one Mr. Ashish Chatterjee (since deceased) was suffering from various ailments. He was only informed by his counsel on 18.11.2017 telephonically about the dismissal of the appeal and thereupon on 25.11.2017, it was informed to him in person. Under such circumstances, the original applicant requested the said lawyer to apply for the certified copy on 27.11.2017 and the certified copy was handed over to the original applicant on 04.01.2018. Thereupon, the original applicant came and met his counsel at Guwahati on 06.01.2018. The counsel at Guwahati informed the applicant that in order to give an opinion and prefer an appeal against the impugned judgment and decree passed by the learned 1st appellate court, he would require the certified copy of the evidence and all other documents. Under such circumstance, the original applicant could gather the same from his lawyer at Nagaon on 07.02.2018 and came to Guwahati on 11.02.2018. Thereupon, the second appeal was filed on 19.02.2018, which occasioned 132 days of delay.

3. Be that as it may, although the said appeal was filed by the lawyer, there were certain defects. In view of those defects, the matter came up before this

Court and by the order dated 20.07.2018 this Court had granted three weeks time to rectify the said defects, else the proceedings would be dismissed without further reference to the Court. This aspect of the matter was informed to the petitioner in the 1st week of August, 2018 and the petitioner could deposit the necessary amount only on 16.08.2018. But as the said amount was given by the original applicant post expiry of three weeks from the date of order dated 20.07.2018, the said application filed by the petitioner was dismissed, in view of the order dated 20.07.2018. Thereupon an application was filed by the petitioner on 24.08.2018 for restoration of the second appeal along with the condonation petition. In that process, the delay of 327 days had occurred. It is also relevant to note that the original applicant during the pendency of the present application had succumbed to his illness.

4. Mr. A Biswas, the learned counsel appearing on behalf of the respondent duly objects to the condonation of the delay, thereby submitting that the said application which has been filed is mischievous and also do not explain the delay as required under the law.

5. This Court having taken note of the above facts is of the opinion that the applicant has been able to make out a sufficient cause for condoning the delay on the facts above narrated. It is also observed that the delay in filing the accompanying appeal was actually 132 days, but on account of the order passed by this Court on 20.07.2018, the appeal was dismissed for not rectifying the defects. In the opinion of this Court, the delay having been explained and the grounds assigned being reasonable, this is a fit case for condoning the

delay. Accordingly, the instant application is allowed condoning the delay.

6. With the above, the interlocutory application stands disposed of.

JUDGE

Comparing Assistant