

GAHC010256822022



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

Case No. : RSA/45/2024

ASKAR ALI
S/O LATE BODIAL SHEIKH
VILLAGE KOMLARJHAR, PO MOTERJHAR,
PS GOLAKGANJ, DIST DHUBRI, ASSAM, 783331

VERSUS

NOBIULLAH SHEIKH AND ANR
S/O LATE KHADIAL SHEIKH
VILLAGE KAMLARJHAR, P.O. MOTERJHAR, P.S. GOLAKGANJ, DIST
DHUBRI, ASSAM, PIN 783331

2:THE STATE OF ASSAM
REPRESENTED BY THE DEPUTY COMMISSIONER
DHUBRI
ASSA

For the Petitioner(s)	: Mr. T. Sk, Advocate
For the Respondent(s)	: Mr. K. Singha, Advocate
	: Mrs. D. D. Barman, Advocate

Date of Hearing	: 31.05.2024
Date of Judgment	: 31.05.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

This is an appeal under Section 100 of the Code of Civil Procedure 1908 (for short, the Code) challenging the order dated 24.03.2022 passed in Title Appeal No.16/2021 whereby the application under Section 5 of the Limitation Act, 1963 (for short, the Act of 1963) registered as Petition No.4947/21 dated 21.12.2021 was rejected thereby the accompanying appeal which was filed being Title Appeal No.16/2021 was dismissed being barred by limitation. The consequential effect is that the judgment and decree dated 25.01.2021 in Title Suit No.236/2015 was affirmed.

2. This Court vide an order dated 03.05.2024 had admitted the instant appeal by formulating the following substantial question of law:

Whether the First Appellate Court was justified in dismissing the application under Section 5 of the Limitation Act, 1963 for condoning the delay without taking into consideration the order of the Supreme Court dated 10.01.2022 passed in *Suo Moto* WP(C) No.3/2020?

3. The question arises in the instant proceedings as to whether the learned First Appellate Court i.e. the Court of the learned Civil Judge, Dhubri was justified in rejecting the application for condonation of delay taking into account the order dated 10.01.2022 passed by the Supreme Court in the *Suo Motu* Writ Petition (C) No.3/2020. This Court finds it very pertinent to take note of that in paragraph 5 of the said order passed by the Supreme Court, it was categorically observed that the period from 15.03.2020 till 28.02.2022 shall be excluded for the purpose of limitation as may be prescribed under

the general or special laws in respect to all judicial and quasi-judicial proceedings. It was further stipulated that in case where the limitation would have expired during the period between 15.03.2020 to 28.02.2022, notwithstanding, the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

4. In the instant case, if this Court takes note of the judgment and decree which was put to challenge in Title Appeal No.16/2021, it would transpire that the judgment and decree was passed on 25.01.2021 in Title Suit No.236/2015. The appeal was filed on 21.12.2021. Taking into account the order of the Supreme Court dated 10.01.2022, this Court is of the opinion that the appellant herein would have been entitled to a period up till 31.05.2022 to file the said appeal. In the instant case, the appeal admittedly was filed on 21.12.2021 and, therefore, the same was within the period of limitation and in fact, there was no requirement, even for filing an application for condonation of delay.

5. In that view of the matter, the substantial question of law which has been formulated by this Court is duly involved in the instant appeal. Consequently, the impugned order dated 24.03.2022 passed in Title Appeal No.16/2021 is set aside and quashed.

6. This Court further taking into account that the appellant as well as the respondents are duly represented before this Court, the said parties are directed to appear before the Court of the learned Civil Judge, Dhubri on 15.07.2024. Upon appearance, the learned First Appellate Court shall proceed with the disposal of the Appeal on merits.

7. With the above, the instant second appeal stands allowed. However, in the facts of the case, there shall be no order as to costs.

JUDGE

Comparing Assistant