GAHC010162942025

2026:GAU-AS:10052

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

Case No. : CRP(IO)/295/2025

MRIGEN KALITA
S/O LT HEMENDRA KALITA VILL KHUTIKATIA MOUZA KACHOMARI PS SADAR DIST NAGAON ASSAM PIN 782002

VERSUS

DIPEN BORO
S/O LT KRISHNAKANTA BORO VILL HAIBOR GAON MOUZA KACHOMARI PS SADAR DIST NAGAON PIN 782002

Advocate for the Petitioner : MR A ISLAM, MR A SHARMA

Advocate for the Respondent : MR. P K MAZUMDAR,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 21.07.2026

Heard Mr. A. Islam, learned counsel for the petitioner. Also heard Mr. P.K. Mazumdar, learned counsel for the respondent.

2. This petition, under Article 227 of the Constitution of India, read with Section 151 CPC, is directed against the order dated 13.11.2024, passed by the

learned Civil Judge (Senior Division), Nagaon ('trial Court', for short), in Misc. (J) Case No. 28/2022, whereby the prayer for condonation of delay in filing regular first appeal was rejected.

3. Mr. Islam, learned counsel for the petitioner submits that the respondent herein as plaintiff had instituted a suit before the learned Civil Judge (Junior Division) No. 2, Nagaon, being Title Suit No. 133/2017, against the petitioner for specific performance of contract against the *bainanama* agreement, dated 11.01.2010, for sale of the suit land, purportedly executed by the petitioner's father, Late Hemendra Kalita during his lifetime, which was not known to the petitioner and his mother, namely, Bulu Kalita. Mr. Islam also submits that Late Hemendra Kalita died on 25.07.2014, leaving behind the petitioner and his mother, Bulu Kalita, and the said suit land is jointly owned by them. But, the suit in question was filed against the petitioner alone without impleading Bulu Kalita as a party therein and moreover, the suit was filed after seven years of alleged *bainanama* without any delay condonation prayer, which ought to have been dismissed at the first instance by the learned trial Court. Mr. Islam further submits that however, by an ex-parte judgment and decree dated 12.10.2018, the learned trial Court had decreed the Title Suit No. 133/2017 and put the said decree in execution in Title Execution Case No. 14/2019, and thereafter, vide order dated 29.10.2024, passed in Title Execution Case No. 14/2019, under Order 21 Rule 34(6) CPC, a registered sale deed had been executed and a writ of possession dated 13.02.2025, had been issued, and the same was again re-issued on 30.06.2025. Mr. Islam also submits that in the meantime, the petitioner came to know about the ex-parte judgment and decree in the title suit only when he received notice on 30.04.2022, in Title Execution Case No. 14/2019, regarding draft sale deed, and accordingly, he preferred one regular

first appeal before the learned trial Court with a condonation petition for the delay. But, the learned trial Court, vide impugned order dated 13.11.2024, passed in Misc. (J) Case No. 28/2022, had rejected the same and accordingly, failed to exercise its jurisdiction to avoid execution by an illegal, invalid and ineffective decree.

3.1. Mr. Islam further submits that rejection of the application filed by the petitioner has caused grave injustice and that the first appeal is required to be heard on merit by condoning the delay to avoid miscarriage of justice, and therefore, the petitioner has approached this Court by filing the present petition.

3.2. By referring to the petition No. 676/2022, filed by the petitioner, dated 15.06.2022, Mr. Islam submits that the delay has been explained in paragraph No. 3 of the petition and despite existence of sufficient cause and the same being demonstrated by the petitioner, the learned trial Court has failed to exercise its discretion, and therefore, the impugned order warrants interference of this Court. In support of his submission, Mr. Islam has referred to a decision of Hon'ble Supreme Court in the case of **Inder Singh vs. The State of Madhya Pradesh**, reported in **2025 0 INSC 382**.

4. Per contra, Mr. Mazumdar, learned counsel for the respondent has vehemently opposed the petition. He submits that the learned trial Court has duly considered the explanation, so put forwarded by the petitioner, in the application and thereafter, rightly arrived at the conclusion that the delay has not sufficiently been explained, and therefore, rejected the application. He further submits that the impugned order suffers from no illegality or irregularity or any jurisdictional error requiring this Court to interfere with the same by exercising the supervisory jurisdiction, under Article 227 of the Constitution of

India, and therefore, he has contended to dismiss the petition.

5. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record, and also perused the impugned order dated 13.11.2024, by which the learned trial Court had dismissed the petition under Section 5 of the Limitation Act, and also gone through the petition No. 676/2022, dated 15.06.2022, filed by the petitioner, upon which Misc. (J) Case No. 28/2022, was registered.

6. It appears that in paragraph No. 3 of the petition No. 676/2022, the petitioner has explained the ground for delay and the same is extracted herein below to deal with the issue with greater precision:

> "**3. That, the petitioner/ appellant received one summon on 30-04-2022 of T. Ex- 14/19 and the petitioner appear in the case with his lawyer on 02-05-2022 before the Munsiff No-2 Nagaon. The petitioner is a lay man and he has no any knowledge about this case. The engaged lawyer inform the petitioner about T.S. 133/17 and the Ex-parte order and ex-parte Judgment and Decree, passed by Munsiff No-2 , Nagaon on 12-10-2018, by Ld. Munsiff No-2, Nagaon in T.S. 133/17. Then the petitioner immediately apply on 05-05-2022 for certified copy of Ex-parte order, ex-parte judgment and decree passed by Ld. Munsiff No-2, Nagaon in T.S 133/17 and certified copy received from copying assistance, Nagaon on 31-05-2022 and after obtaining court fee the petitioner/ appellant this appeal filed before Hon'ble Court. As such if the appeal is not considered on merit there will be gross in justice to the petitioner and the petitioner/appellant will be suffer irreparable loss and injury.**"

7. During the course of hearing, it has been pointed out by Mr. Mazumdar,

learned counsel for the respondent that the delay was 1322 days and the same has not properly been explained, and this Court, having considered the submission of Mr. Mazumdar, in the light of the explanation so put forwarded in paragraph No. 3 of the petition No. 676/2022, finds sufficient force in the submission of Mr. Mazumdar. It is stated in paragraph No. 3 of the petition No. 676/2022 that the petitioner is a layman and he has no knowledge about this case. But, this appears to be not an explanation at all and except above, no other statement or averment explaining the delay has been made.

8. Further, the learned trial Court, in the impugned order, has observed that - **in the present case in hand, no argument forwarded by the learned counsel for the petitioner can cut any ice as they have horribly failed to show 'sufficient cause' for condoning the delay. It is clear that the petitioner had received summons to the Title Suit and as such had negligently refrained from contesting the suit. Further, there appears no other cogent reason shown by the petitioner that can be construed as a 'reasonable cause' for delay in filing the appeal. The time taken for receiving copies cannot be an explanation when it is proved that summons had been duly served and he had callously refrained from attending and contesting the suit. Hence, there is complete lack of bona-fide on the part of the petitioner in filing the present petition for condonation of delay in filing appeal.** And accordingly, dismissed the application.

9. The finding, so recorded by the learned trial Court, while examined in the light of the explanation put forwarded by the petitioner in his petition No. 676/2022, this Court finds that the learned trial Court has rightly observed and

recorded the aforesaid finding.

10. This Court has also carefully gone through the decision of Hon'ble Supreme Court in the case of **Inder Singh** (supra), wherein Hon'ble Supreme Court has observed that there can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particularly case, the merits have to be examined, it should not be scuttled on the basis of limitation.

11. The aforesaid proposition laid down in the aforementioned case would not come into assistance of the petitioner, inasmuch as the petitioner has failed to explain the delay of 1322 days in preferring the application under Section 5 of the Limitation Act.

12. In the result, this Court finds this petition devoid of merit, and accordingly, the same stands dismissed, leaving the parties to bear their own costs.

JUDGE

Comparing Assistant