

Party Name : NIRMAL KANTI ROY BARMAN & ORS Vs MRINAL KANTI ROY BARMAN & ORS

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THE HONBLE MR JUSTICE U. B. SAHA

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The instant application is filed under section 5 of the Limitation Act for condonation of delay of 382 days in filing the petition for substitution of legal heirs of the deceased petitioner No.1 Nirmal Kanti Roy Barman @ Barman Roy, who died on 14.02.2014.

Heard Mr. DR Choudhury, learned counsel for the petitioners and Mr. S Deb, learned Sr. counsel and Mr. P Dutta learned counsel for the respondent No.1. Mr. Choudhury while urging for condonation of delay would contend that the present petitioners earlier filed one application for addition of parties, but subsequently, the same was withdrawn on 09.04.2015 and thereafter the learned counsel of the present applicant-petitioners contacted with the petitioner No.2 Partha Roy Barman, but as he was out of station for his business purposes for long time, he could not meet with his learned counsel. Only on 30.05.2015, he met with the learned counsel, Mr. DR Choudhury and placed the names and addresses of the legal heirs of the deceased petitioner No.1 for which there was a delay of 382 days in preferring the substitution application.

On the other hand, Mr. Deb, learned Sr. counsel has seriously objected to the prayer for condonation of delay on the ground that a dead person cannot be the petitioner in an application for condonation. Not only that in the substitution petition also, the legal heirs of the deceased petitioner No.1 cannot be made as respondents, as they are also the share-holders of the properties of the deceased Nirmal Kanti Roy Barman as legal heirs.

Considering the submission of the learned counsel for the parties as well as the contention made in paragraph -8 of the petition, there is no doubt that the delay has not been explained in detail, but there are some reasons for causing delay in preferring the substitution application. If the application for condonation is dismissed, then the petitioners will be deprived of substantial justice. Considering the entire facts and circumstances, the instant application for condonation of delay of 382 days in filing the petition for substitution of the deceased petitioner No.1 Nirmal Kanti Roy Barman @ Barman Roy is allowed subject to payment of Rupees 5,000/- as costs to the respondent No.1 Shri Mrinal Kanti Roy Barman within 10 days from today.

With the above, the instant CM Application is disposed of.