GAHC010053982019

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

Case No. : I.A.(Civil) 905/2019

1:BIREN DAS AND 4 ORS
S/O LATE BELI RAM DAS, RESIDENT OF LAMB ROAD, AMBARI,
GUWAHATI 01, PS LATASIL, DIST KAMRUP

2: SMTI PRANATI DAS

d/O LATE BELI RAM DAS
RESIDENT OF LAMB ROAD
AMBARI
GUWAHATI 01
PS LATASIL
DIST KAMRUP

3: ON THE DEATH OF LATE DEEPANJALI BASUMATARY

HER LEGAL HEIRS

3.1: SHRI JATINDRA MOHAN BASUMATARY

RESIDENT OF BORTHAKUR MILL ROAD
ULUBARI
GUWAHATI 7
PS PALTAN BAZAAR
DIS T KAMRUP

3.2: SMTI DEBASHREE KASHYAP

D/O SRI JATINDRA MOHAN BASUMATARY

RESIDENT OF BORTHAKUR MILL ROAD
ULUBARI

GUWAHATI 7
PS PALTAN BAZAAR
DIS T KAMRUP

3.3: SMTI PRIYANKA KASHYAP
D/O SRI JATINDRA MOHAN BASUMATARY

RESIDENT OF BORTHAKUR MILL ROAD
ULUBARI
GUWAHATI 7
PS PALTAN BAZAAR
DIS T KAMRU

VERSUS

1:KANKAN DAS AND 2 ORS
S/O SRI ATUL DAS, RESIDENT OF ARYA NAGAR, PS PALTAN BAZAAR, GUWAHATI 16, KAMRUP ASSAM

2:SHRI ATUL DAS
S/O LATE HARKANTA DAS
RESIDENT OF ARYA NAGAR
PS PALTAN BAZAAR
GUWAHATI 16

3:SHRI GAUTAM CHANDRA NATH
S/O TARUN CHANDRA NATH
RESIDENT OF SIXTH MILE KHANAPARA
GUWAHATI 22
PS DISPUR

Advocate for the Petitioner : MR. N DEKA

Advocate for the Respondent : MR. G MISHRA

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 20-02-2020

Heard Mr. N Deka, learned counsel for the applicant and Mr. MK Sharma, learned counsel for the opposite party.

This interlocutory application is preferred under Section 5 of the Limitation Act for condoning a delay of 496 days in preferring the accompanying regular first appeal.

It is stated in the application that in fact there is a delay of one day in filing the appeal. If the earlier period during which the appellant had filed the Title Appeal No.33 of 2016 in the Court of learned District Judge, Kamrup, which was wrongly filed, is considered now under Section 14 of the LA Act, Mr. MK Sharma, learned counsel for the opposite party does not object to the invocation of Section 14 of the Limitation Act. But he raises an objection that the period between 02.08.2016 and 14.09.2016 and 12.10.2016 to 30.10.2016 had not been adequately explained.

Mr. N Deka, learned counsel for the applicants stated that the said period is covered in the period consumed by the appellant in preferring the appeal before the wrong forum and therefore if is accepted that the appeal before the learned District Judge was prosecuted in good faith, the said period would also be covered.

Without going into the aspect as to whether the period objected would be covered or not, we are of the view that ends of justice will be met if the delay in filing the accompanying regular appeal, which would be 496 days is condoned by accepting the plea of the applicant that the proceeding before the learned District Judge was instituted on good faith. But however, as agreed by the parties considering the inconvenience caused, a cost of Rs.2,500/- is imposed on the applicant.

Accordingly, the delay of 496 days in preferring the accompanying appeal stands condoned. Applicant to pay the opposite party the cost of Rs.2,500/- within 2(two) weeks.

Registry is directed to register the accompanying appeal and list the same

The interlocutory application stands disposed of.

JUDGE

Comparing Assistant