

T.S. No.690 of 2022

16.07.2026

1. Both parties are represented.
2. I have heard the plaintiff side today.
3. The defendant side filed the hajira but did not come for hearing.
4. I have gone through the petition filed by the plaintiff vide petition No.766/2023 Under Order XXII Rule 9 C.P.C. r/w Section 5 of Limitation Act. for condonation of delay of 225 days for setting aside the abatement of the sole plaintiff due to death of the sole plaintiff of the suit namely Karuna Das and also perused the petition filed Under Order XXII Rule 3 r/w Section 151 of C.P.C. vide Petition No.765/23.
5. I have also gone through the objections filed by the defendants against both the petitions.
6. Since both these petitions are pending for disposal since 2023 I deem it fit to pass the order today by going through the petitions and objections filed by the parties.
7. The case of the plaintiff is that the original sole plaintiff of this case Karuna Das expired on 08.05.22 during the pendency of this suit and he left behind his wife Smt. Namita Das Choudhury as his only legal representative and her right to sue survives.
8. It is further stated in the petition that owing to transfer of the suit, on account of pecuniary jurisdiction from the Court of Civil Judge (Sr. Divn.)

No.3, Kamrup (M), the records were not available in this Court as it was placed before Hon'ble District Judge, Kamrup (M) for transfer from 02.04.22 till 26.10.2022. And therefore the substitution petition could not be filed within the prescribed time period. Consequently, the present petitions were filed before this Court with a delay of 225 days.

9. The opposite party has filed Written-Objection contending that the petitioner has failed to establish sufficient cause for condonation of delay and in absence of a legal heir certificate, the petitioner cannot be accepted as the sole legal representative of deceased plaintiff and prayed for dismissal of both the petitions.

10. The death of the original plaintiff on 08.05.2022 is not in dispute as the death certificate has been placed on record.

11. The petitioner has specifically pleaded that she is the only legal representative of her deceased husband and no material has been placed by the defendants to show that the deceased plaintiff has any other legal heirs except the petitioner and the petitioner is not entitled to represent his suit.

12. With regard to the delay, the explanation given by the petitioner is found to be satisfactory and it is a settled law that while considering an application for condonation of delay, the Court is required to adopt a liberal approach where sufficient cause is

shown and where refusal to condone the delay would result in denial of adjudication on merits.

13. This Court is satisfied that sufficient cause has been shown for the delay in filing the substitution petition.

14. Hence, the petition Under Section 5 of the Limitation Act r/w Order XXII Rule 9 of C.P.C. is allowed.

15. The delay of 225 days is condoned and the abatement is set aside.

16. Accordingly, Petition No.766/23 and 765/23 are disposed of.

17. Bench Asstt. Is directed to make necessary correction in the original plaint by inserting the name of Smt. Namita Das Choudhury as plaintiff No.1(a) in place of Late Karuna Das in red-ink.

18. Perusal of the case-record reveals that prior to filing of the petition, this case was fixed for cross-examination of D.Ws.

19. Accordingly, **Smt. Payal Choudhury** is appointed as Advocate Commissioner for cross of D.Ws.

20. Both parties are to cooperate to each other.

21. Issue Writ of Appointment.

22. D.A. to take steps.

23. Fixed 16.09.26 for Commissioner's Report.

