

GAHC010192992017



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

Case No. : I.A.(Civil) 429/2017
IN
RSA 159/2016

1:JITEN KALITA,

VERSUS

1:JADAB BARMAN and 20 ORS,

Advocate for the Petitioner : Mrs. R. Choudhury

Advocate for the Respondent : Mrs. B. Sarma

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 09.07.2018

Heard Mrs. R. Choudhury, learned counsel for the petitioner as well as Mrs. B. Sarma, learned counsel appearing for the respondents No. 1 to 5.

Referring to the order dated 28.05.2018, the learned counsel for the petitioner has referred to order dated 03.03.2017 by which notices were issued only on respondents No. 19(a) to 19(d). As in the present case, the respondent No. 19 had expired, this application has been filed under Section 5 of the Limitation Act for condoning the delay of 242 days in filing the petition for setting aside the abatement.

It is submitted that the legal representatives of the respondent No. 19 are only concerned in the present application. The said submission of the learned counsel for the petitioner is accepted in view of order dated 03.03.2017.

It appears that by order dated 28.05.2018⁷, notice was deemed to be duly served on respondent No. 19(a) to 19(c) and the respondent No. 19(d) was struck off.

The learned counsel for the petitioner submits that the connected appeal was listed on 23.11.2016 and upon perusal of the office note dated 02.09.2016, it was noticed that the respondent No. 19 was shown to have died. Thereafter, sometime was consumed in informing the petitioner and to collect the necessary particulars and in the process there was a delay of 242 days beyond the period of limitation in filing the connected application for setting aside the abatement. It is further submitted that only on getting information from the counsel, the petitioner had verified and found out that the respondent No. 19 had died on 01.01.2016 and from the date of death there has been a delay of 242 days.

Although the learned counsel appearing for the respondents No. 1 to 5 has opposed this application, but considering the causes shown in this application, this Court is inclined to accept the same as good and sufficient cause which has prevented the applicant from filing the connected application for setting aside the abatement on time. Accordingly, the delay of 242 days is hereby condoned.

I.A. stands allowed.

JUDGE

Comparing Assistant