

GAHC010257552023



2025:GAU-AS:5451

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

Case No. : I.A.(Civil)/3393/2023

ISMAIL HUSSAIN @ PUTU and 2 ORS
S/O LATE EUNUS ALI, RESIDENT OF VILLAGE BAUSIPARA, SWARAJ
ROAD, P.O. AND P.S. GOALPARA, PIN 783101, DIST. GOALPARA, ASSAM.

2: MD. ABDUL AZIZ @ AZIZ
S/O LATE ELAHI SHEIKH
RESIDENT OF VILLAGE BAUSIPARA
SWARAJ ROAD
P.O. AND P.S. GOALPARA
PIN 783101
DIST. GOALPARA
ASSAM.

3.1: MD. ALISH ALI @ BATCHU HIS LEGAL HEIRS
ANSUIRA BEGUM
W/O LATE MD. ALISH ALI @ BATCHU
RESIDENT OF VILLAGE BAUSIPARA
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3.2: ASIF ALI

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3.3: IRFAN ALI

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VERSUS

ON THE DEATH OF MONOWAR HUSSAIN HIS LEGAL HEIRS MAHNAJ
MONOWAR AND ANR.
D/O LATE MONOWAR HUSSAIN, W/O GUDDU KHAN, RESIDENT OF SIX
MILE, P.S. KHANAPARA, DIST. KAMRUP(M), PIN 781022.

3.3: SHAHANAJ MONOWAR
D/O LATE MONOWAR HUSSAIN
W/O IFTIKAR ALI
RESIDENT OF BAKUR PARA
PART-II
P.O. AND P.S. GOALPARA
DIST. GOALPARA
PIN 783101

Advocate for the Petitioner : MS.R CHOUDHURY,

Advocate for the Respondent :

Linked Case : I.A.(Civil)/3390/2023

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Advocate for : MS.R CHOUDHURY
Advocate for : MR. A K RAY appearing for ON THE DEATH OF MONOWAR
HUSSAIN HIS LEGAL HEIRS MAHNAJ MONOWAR AND ANR.

Linked Case : I.A.(Civil)/3388/2023

ISMAIL HUSSAIN @ PUTU and 2 ORS
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Advocate for : MS.R CHOUDHURY
Advocate for : MR. A K RAY appearing for ON THE DEATH OF MONOWAR
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Linked Case : RSA/322/2017

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Advocate for : MS.R CHOUDHURY
Advocate for : MR A K RAI appearing for MONOWAR HUSSAIN

Linked Case : I.A.(Civil)/2023/2022

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Linked Case : I.A.(Civil)/3392/2023

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Advocate for the petitioner(s) : Ms R Choudhury

Advocate for the respondent(s) : Mr A K Rai

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

02.05.2025

By this order, this Court proposes to dispose of the six applications.

2. The instant appeal has been filed under Section 100 of the Code of Civil Procedure (for short, "the Code"), challenging the Judgment and Decree dated 02.08.2017, passed by the learned Civil Judge, Goalpara, in Title Appeal No. 06/2015. This Court vide an order dated 03.11.2017, admitted the appeal by formulating a substantial question of law. Thereupon, the sole respondent appeared before this Court through the counsel.

3. On 19.05.2022, the counsel for the sole respondent vide an application under Order XXII Rule 10A of the Code, informed this Court that the sole respondent expired on 12.05.2021. The said application, being IA(C) No. 1690/2022, was disposed of vide an order dated 13.06.2022, by duly recording that the learned counsel who appears on behalf of the sole respondent had duly performed his obligation as obligated under Order XXII Rule 10A of the Code.

4. Upon such information being provided, two applications were filed by the appellants, i.e., an application under Order XXII Rule 9 and an application under Order

XXII Rule 4 of the Code, which were registered and numbered as IA(C) No. 2023/2022 and IA(C) No. 2023/2022. While these two applications were pending, the appellant No. 3 expired on 10.06.2023. Accordingly, three applications were filed on 15th of November, 2023, being applications under Order XXII Rule 3, Order XXII Rule 9 of the Code, as well as an application under Section 5 of the Limitation Act, 1963, for condoning a delay of 6 (six) days. The said applications were registered and numbered as IA(C) No. 3392/2023, IA(C) No. 3390/2023 and IA(C) No. 3388/2023, respectively.

5. Taking into account an objection was raised by the counsel appearing on behalf of the respondents that there was a delay in filing the application under Order XXII Rule 9 of the Code, for setting aside the abatement of the sole respondent, another application was filed by the applicants, which was registered and numbered as IA(C) No. 3393/2023, seeking condonation of delay.

6. It is seen that in respect to the application being IA(C) No. 3393/2023, an objection has been filed by the opposite party Nos. 1 (a) and 1 (b), wherein it has been mentioned that the wife of the appellant No. 3 had due knowledge about the death of the sole respondent as she has certified the death of the sole respondent.

7. Mr A K Rai, the learned counsel appearing on behalf of the respondents, submits that he has no objection in respect to setting aside of the abatement and the substitution of the appellant No. 3, but he has objection as regards the condonation of delay in filing the application for setting aside the abatement of the sole respondent on the ground that the grounds so explained do not come within the meaning of 'sufficient cause', as mandated under Section 5 of the Limitation Act.

8. In order to decide the said objection, so raised by Mr A K Rai, the learned counsel, this Court finds it relevant to take note of a recent judgment of the Supreme Court in the case of *Om Prakash Gupta @ Lalloowa –Vs- Satish Chandra (now deceased)*; reported in **2025 SCC Online SC 291**. In the said judgment, the Supreme Court dealt with the

provisions of Order XXII Rule 10A of the Code and observed that the said provision cast a duty upon pleader appearing for a party to the suit to intimate the Court about the death of such party. The Supreme Court further observed that the said provision further provides that once the Court is informed by the pleader of the party that he is no more, “the Court shall notify the opposite party of the death”. The Supreme Court opined that a straightforward interpretation of this Rule would suggest that the Court is obligated to issue notice to the other party. Nonetheless, this obligation may not arise in all circumstances. The Supreme Court observed that one notable exception could be that when the information regarding the party’s death is conveyed to the Court, in the presence of the opposite party/pleader, or is documented by the Court in the order sheet, in such case, if the pleader of the concerned party (and consequently, the party itself) has already been notified, issuance of further notice from the Court would not serve any substantial purpose, other than being an exercise by way of abundant caution. Paragraphs-28 and 29 of the said judgment being relevant are reproduced hereunder:-

*“28. Rule 10-A was not originally contained in CPC, but was inserted in the CPC in the year 1976 for a noble purpose which has been acknowledged by this Court in multiple decisions. The first of such decisions, perhaps, is **Gangadhar v. Raj Kumar**; reported in (1984) 1 SCC 121, where this Court held:*

“3. ... Rule 10-A which has been added in Order XXII of the Code of Civil Procedure by the Amending Act of 1976 provides that when a pleader appearing for a party to the suit comes to know of the death of the party, he shall inform the court about it and the court thereafter shall issue notice to the other party. In the case of an appeal, the word ‘suit’ has to be read as ‘appeal’. This provision was introduced specifically to mitigate the hardship arising from the fact that the party to an appeal may not come to know about the death of the other party during the pendency of the appeal but when it is awaiting its turn for being heard. The appeal lies dormant for years on end and one cannot expect the other party to be a watch-dog for day-to-day

survival of the other party. When the appeal on being notified for hearing is activated, knowledge occasionally dawns that one or the other party has not only died, but the time for substitution has run out and the appeal has abated. In order to see that administration of justice is not thwarted by such technical procedural lapse, this very innovative provision has been introduced, whereby, a duty is cast upon the learned advocate appearing for the party who comes to know about the death of the party to intimate to the court about the death of the party represented by the learned counsel and for this purpose a deeming fiction is introduced that the contract between dead client and lawyer subsists to the limited extent after the death of the client. (emphasis supplied)

29. Rule 10-A casts a duty upon a pleader appearing for a party to the suit to intimate the court about the death of such party. It further provides that once the court is informed by the pleader of a party that he is no more, the court “shall” notify the opposing party of the death. A straightforward interpretation of this rule would suggest that the court's obligation to issue notice to the other party is indeed mandatory. Nonetheless, this obligation may not arise in all circumstances. One notable exception could be when the information regarding the party's death is conveyed to the court in the presence of the opposing party's pleader or is documented by the court in the order sheet. In such cases, if the pleader of the concerned party (and consequently the party itself) has already been notified, issuing a further notice from the court would not serve any substantial purpose other than being an exercise by way of abundant caution. Therefore, in the aforementioned scenario, the absence of a notice from the court would not imply a failure to comply with Rule 10A, suggesting that it is not “always mandatory”.

9. In the instant case, the sole respondent was duly represented. On 12.05.2021, the sole respondent had expired and as such, it was an incumbent duty upon the counsel representing the sole respondent to inform this Court, in terms with Order XXII Rule 10A forthwith. However, it was only informed by filing an application on 19.05.2022

and this Court duly recorded the same on 13.06.2022. It is further seen that immediately, thereafter, the two applications were filed being IA(C) No. 2023/2022 and IA(C) No. 2024/2022.

10. Considering the above, it is the opinion of this Court that the delay in filing of the application for setting aside the abatement of the sole respondent is required to be allowed and accordingly, this Court orders so.

11. This Court further takes note of that the right to pursue the instant appeal against the legal representatives of the sole respondent continues, pursuant to the death of the sole respondent and as such, it is the opinion of this Court that both the applications seeking setting aside of the abatement as well as the application seeking substitution of the legal representatives of the sole respondent, is required to be allowed. Accordingly, this Court substitutes the opposite party Nos. 1 (a) and 1 (b) of IA(C) No. 2024/2022, as against the sole respondent and they are arrayed as respondent Nos. 1.1 and 1.2 to the accompanying appeal.

12. This Court further takes note of that the appellant No. 3, having expired and the causes so shown in the application, being IA(C) No. 3388/2023, seeking condonation of delay for 6 (six) days being sufficient, this Court allows the said application, thereby condoning the delay in filing the application for setting aside the abatement of Appellant No. 3.

13. This Court further takes note of that the right to pursue the appeal, pursuant to the death of the appellant No. 3 continues, in favour of the legal representatives of the Appellant No. 3 and accordingly, this Court substitutes the Applicant Nos. 3 (a), 3 (b) and 3 (c), as against the Appellant No. 3, and arrayed as Appellant Nos. 3.1, 3.2 and 3.3 to the accompanying appeal.

14. All the interlocutory applications, accordingly, stand allowed.

15. The learned counsel appearing on behalf of the appellants, shall file a fresh memo

of parties before the Registry of this Court within 7 (seven) days from today, and the Registry shall, on the basis of the present order, make necessary correction to the Cause Title and update the same in the CIS.

JUDGE

Comparing Assistant