

GAHC010065952024



2026:GAU-AS:4583

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

Case No. : I.A.(Civil)/2971/2024

PALASH DAS AND 2 ORS
S/O LATE BIRENDRA NATH DAS, R/O HOWLY TOWN, WARD NO. 3,
MOUZA- GHILAZARI, P.S.-HOWLY, DIST- BARPETA, ASSAM

2: SHASHANKA DAS
S/O LATE BIRENDRA NATH DAS
R/O HOWLY TOWN
WARD NO. 3
MOUZA- GHILAZARI
P.S.-HOWLY
DIST- BARPETA
ASSAM

3: BULU DAS
S/O LATE BIRENDRA NATH DAS
R/O HOWLY TOWN
WARD NO. 3
MOUZA- GHILAZARI
P.S.-HOWLY
DIST- BARPETA
ASSA

VERSUS

NIRADA NATH
W/O RUPAM NATH, R/O HOWLY TOWN, WARD NO. 3, MOUZA-GHILAZARI,
P.S.-HOWLY, DIST- BARPETA, ASSAM

Advocate for the Petitioner : MR. SHEELADITYA,

Advocate for the Respondent : ,

Linked Case : RSA/204/2019

SRI BIRENDRA NATH DAS
S/O- LATE NARESWAR DAS
R/O- HOWLY TOWN
WARD NO. 3
MOUZA- GHILAMARI
P.S. HOWLY
DIST.- BARPETA
PIN-781316

VERSUS

NIRADA NATH
W/O- RUPAM NATH
R/O- HOWLY TOWN
WARD NO. 3
MOUZA- GHILAMARI
P.S. HOWLY
DIST.- BARPETA
PIN- 781316.

Advocate for : MR. SHEELADITYA
Advocate for : MR H GUPTA appearing for NIRADA NATH

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

31.03.2026

Heard Mr. Sheeladitya, learned counsel for the applicants.

2. This application, under Section 5 of the Limitation Act, is preferred by the applicants for condonation of delay of 603 days for setting aside the abatement/substitution of legal heirs of the deceased appellant, who had

suffered demise on 12.05.2023.

3. Mr. Sheeladitya, learned counsel for the applicants submits that the sole appellant, Sri Birendra Nath Das, had suffered demise on 12.05.2023; and the applicants herein had met their counsel on the last part of February and they were not aware of the legal provisions and were also not aware of the fact that the names of the legal heirs have to be substituted in place of the deceased appellant, as the right to sue survives against the deceased appellant; and that the learned counsel for the appellant had asked the petitioner to collect the names and addresses of the legal heirs of the deceased appellant and suggested them to file appropriate application before this Court.

3.1 It is the further submission of Mr. Sheeladitya, that the reason for delay has been explained in paragraph Nos. 2, 5 & 6 of the application and that, the delay is not intentional, rather the same is circumstantial and he also submits that in fact, the delay is only 165 days and not 603 days, as vide order, dated 16.03.2026; a Co-ordinate Bench of this Court had directed the Registry to calculate the actual delay and accordingly, the Registry has filed one Office Note, dated 19.03.2026; which indicates that the actual delay is only 165 days; and since, the said delay has sufficiently been explained, Mr. Sheeladitya has contended to allow this application.

4. Having heard the submission of Mr. Sheeladitya, learned counsel for the applicants, this Court has carefully gone through the application and the documents placed on record and also, the explanation put forward in paragraph Nos. 2, 5 & 6; and it appears that the delay has sufficiently been explained in the said paragraphs.

5. Accordingly, this interlocutory application stands allowed. The delay of 165

days in preferring the substitution petition stands condoned.

6. In terms of the above, this interlocutory application stands closed.

JUDGE

Comparing Assistant