

GAHC010076292025



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

Case No. : CRP(10)/211/2025

SANKARLAL AGARWALA @ BHARUKA
S/O LATE BANSHIDHAR AGARWALA, R/O SILBHANGA, JAGIROAD, P.O.
AND P.S.- JAGIROAD, DIST- MORIGAON, ASSAM

VERSUS

SUMAN DEVI SURANA AND 3 ORS.
W/O SRI JAHARIMAL SURANA, R/O H.N. ROAD NEAR HARISABHA, P.O.-
DHUBRI, OPPOSITE APEX BANK LIMITED, WARD NO. 6, DIST- DHUBRI,
ASSAM, PIN-783301

2:ON THE DEATH OF VINOD KUMAR AGARWALLA @ BHARUKA
HIS LEGAL HEIRS AND LEGAL REPRESENTATIVE
NAMELY

2.1:SMT MANJU DEVI AGARWALA
W/O VINOD KUMAR AGARWALA
R/O A.M. CO. ROAD
RAILGUMTI BHAGWATI LANE
WARD NO. 12
DHUBRI
P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

2.2:RAJAT KUMAR AGARWALA
S/O VINOD KUMAR AGARWALA
R/O A.M. CO. ROAD
RAILGUMTI BHAGWATI LANE
WARD NO. 12
DHUBRI

P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

2.3:KHUSBOO DEVI AGARWALA
D/O VINOD KUMAR AGARWALA
W/O MITHUN AGARWALA
R/O BILASIPARA TOWN
WARD NO. 7 (NEAR ELECTRICITY OFFICE)
P.O. AND P.S.- BILASIPARA
DIST- DHUBRI

3:MANOJ KUMAR AGARWALLA @ BHARUKA
R/O A.M. CO. ROAD
RAILGUMTI BHAGWATI LANE
WARD NO. 12
DHUBRI
P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

4:SUSHIL KUMAR AGARWALLA @ BHARUKA
R/O A.M. CO. ROAD
RAILGUMTI BHAGWATI LANE
WARD NO. 12
DHUBRI
P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. K K DEY, MR V K BAROOAH

Advocate for the Respondent : MR G N SAHEWALLA (R-1), MS. S. TODI(R-1),MR M SAHEWALLA(R-1),MS S AGARWAL(R-1)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

26.05.2026

Heard Mr. K.K. Dey, learned counsel for the petitioner as well as Mr. G.N. Sahewalla, learned senior counsel, assisted by Ms. K. Bhattacharjee, learned counsel for the respondent no.1.

2. As per the office note, neither A/D card nor unserved notice on the respondent nos. 2(ii), 3 and 4 has not been received but as per the office note dated 07.01.2026, A/D card has been returned in respect of respondent no. 2(iii) with signature of 2(i). Accordingly, notice is duly served on the respondent nos. 2(i) and 2(iii). None appears on call for the said respondents.
3. In view of the order which is proposed to be passed, issuance of fresh notice on the respondent nos. 2(ii), 3 and 4 is not deemed necessary.
4. The respondent no. 2 in T.S. 23/2021 had died on 14.01.2024. Therefore, 90 days time upto 13.04.2024 is available for substitution and further 60 days time from 14.04.2024 till 13.05.2024 was available for setting aside abatement. However, but this application for substitution was filed on 06.06.2024. Therefore, the application for setting aside abatement and substitution and condonation of delay was filed by the petitioner after 90 days from the date of death, therefore, the suit had abated.
5. The learned trial Court by the impugned order dated 18.01.2025, rejected the application. Therefore, as the rejection of the application was after the suit had abated. In the considered opinion of the Court the petitioner had committed a mistake of not filing a separate application to set aside abatement but instead filed an application for condonation of delay under Section 5 of the Limitation Act, 1963. Hence, under the facts and circumstances of this case, if no application for setting aside abatement

was filed, the application for condonation of delay could have been taken into consideration as an application for setting aside abatement. Under the facts of this case and not intending this order to be a precedent for any other case, the Court deems it fit to exercise jurisdiction under Article 227 of the Constitution of India and set aside the impugned order dated 18.01.2025.

6. As a consequence, the petition nos. 802 and 803 dated 06.06.2024 is restored to the file of the learned Civil Judge (Junior Division) No.1, Dhubri. It may be mentioned that in the photocopy of the said two petitions are annexed to the application as Annexure 1 and 2. However, the petition number is reflected as Petition No. 802/24 dated 06.06.2026 and Petition No. 803/24 dated 06.06.2026, but in the impugned order dated 18.01.2025, those petitions are referred as Petition No. 800/24 and 802/24 in para 3 and as Petition No. 800/24 and 803/24 in para 4. The limitation petition is referred as Petition No. 803/2024 and Petition No. 800/24 is petition under Order XXII Rule 4 read with section 101 CPC. Therefore, notwithstanding the petition numbers given, the petition (a) for substitution; (b) for setting aside abatement; and (c) condonation application are all restored to file of the learned trial Court for a fresh decision in accordance with law.
7. The appearing parties shall appear before the learned trial Court on 12.06.2026 and by producing a certified copy of this order, await for further orders that may be passed by the said learned Court.

JUDGE

Comparing Assistant