

GAHC010105022024



2026:GAU-AS:3069

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

Case No. : I.A.(Civil)/1597/2024

MD. KASHEM ALI
S/O- LATE HASEN ALI,
VILL- PUB PHUTALJAR, MOUZA- SAIDORIA,
P.S.- RUPOHIHAT, P.O.- PUB FUTALJAR,
DIST.- NAGAON, ASSAM, PIN- 782124.

VERSUS

MD. AKBOR ALI AND 2 ORS
S/O- LATE HASEM ALI,
R/O- VILL- PUB PHUTALJAR,
MOUZA- SAIDORIA, P.S.- RUPOHIHAT,
P.O.- PUB FUTALJAR, DISTRICT- NAGAON,
ASSAM, PIN- 782124.

2:MOHAMMAD ALI
S/O- LATE HASEM ALI

R/O- VILL- PUB PHUTALJAR

MOUZA- SAIDORIA
P.S.- RUPOHIHAT

P.O.- PUB FUTALJAR
DISTRICT- NAGAON

ASSAM
PIN- 782124.

3:MD. AHAMMAD ALI
S/O- LATE HASEM ALI

R/O- VILL- PUB PHUTALJAR

MOUZA- SAIDORIA
P.S.- RUPOHIHAT

P.O.- PUB FUTALJAR
DISTRICT- NAGAON

ASSAM
PIN- 782124

Advocate for the Petitioner : MR MONZUR K CHOUDHURY, TANZIM L. CHOUDHURY,R.
BARUAH,MR. S N AHMED,MR. P CHAKRABORTY

Advocate for the Respondent : ,

Linked Case :

MD. KASHEM ALI

VERSUS

MD. AKBOR ALI AND 2 ORS (B)

Advocate for : MR MONZUR K CHOUDHURY
Advocate for : appearing for MD. AKBOR ALI AND 2 ORS (B)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

27.02.2026

1. Heard Mr. T.L. Choudhury, learned counsel for the applicant.
2. Notice dated 02.09.2025 indicates that notice have been served to all the respondents. The process server's report is also tagged and flagged as "X1".
3. It is submitted that earlier notices were also served and acknowledgment have been received back but this was not placed on record.
4. It is submitted that the respondents have earlier not actively contested the Special Land Grabbing Case No.3/2019. It is submitted that after filing the written statement, they did not appear and this case proceeded ex-parte against them.
5. The applicant/petitioner is Md. Kashem Ali, aged about 80 years. The applicant/petitioner instituted a land grabbing case being Special Land Grabbing Case No.3/2019. The applicant/petitioner is aggrieved by the judgment and order dated 07.02.2023, whereby the petitioner's case was dismissed.
6. It is submitted that there was a delay in preferring the criminal revision petition against the order passed by the learned Additional Sessions Judge No.2, Nagaon in Special Land Grabbing Case No.3/2019. As the impugned order was passed on 07.02.2023, the period of limitation expired on 08.05.2023. The criminal revision petition was filed on 17.05.2024 i.e. after an expiry of 365 days i.e. 1 (one) year.

7. It is further submitted that delay was not intentional. The applicant/petitioner is 80 years old and he is an illiterate person from a remote village and was suffering from financial difficulties.

8. The applicant/petitioner was suffering from polytrauma i.e. multiple injuries including injury on the left scapula of bone and he underwent treatment at A.G Hospital, Nagaon and he had to take rest for a considerable period of time to recover from his injuries.

9. The discharge certificate is marked as Annexure – X of the petition, which reflects that the applicant/petitioner was admitted in the Hospital on 06.05.2023 and discharged on 09.05.2023. It is submitted that there was no malafide on the part of the applicant/petitioner.

10. I have considered the age of the applicant/petitioner and the fact that the discharge certificate reflects that the petitioner was improving after treatment. The certificate does not state that the applicant/petitioner has recovered completely. The petitioner has shown sufficient grounds for delay to be condoned.

11. The Supreme Court in *Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors* reported in AIR 1987 SC 1353 has held that:-

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained"

does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted

against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

12. In the light of the decision of the Supreme Court in ***Collector LA Anantnag and Anr (Supra)***, it appears that delay may be condoned. The age of the applicant/petitioner also cannot be ignored. For the interest of justice, delay of 365 days is hereby condoned. In terms of above, the interlocutory application stands disposed of.

13. The Registry is directed to register the connected civil revision petition.

JUDGE

Comparing Assistant