

GAHC010135272023



2026:GAU-AS:2608

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

Case No. : I.A.(Civil)/2319/2023

SEWALI NATH BARUAH AND 2 ORS.
W/O LATE AMAL BARUAH,
RESIDENT OF KHASIA RAM BORO PATH,
FATASIL (KATAHBARI) PO AND PS GARCHUK, GUWAHATI 35, DIST
KAMRUP M ASSAM

2: NAYANMONI BARUAH
S/O LATE AMAL BARUAH

RESIDENT OF KHASIA RAM BORO PATH

FATASIL (KATAHBARI) PO AND PS GARCHUK
GUWAHATI 35
DIST KAMRUP M ASSAM

3: PALASHJYOTI BARUAH
S/O LATE AMAL BARUAH

RESIDENT OF KHASIA RAM BORO PATH

FATASIL (KATAHBARI) PO AND PS GARCHUK
GUWAHATI 35
DIST KAMRUP M ASSA

VERSUS

SANGITA BARUAH
D/O LATE KALPANA BARTHAHAKUR,
RESIDNET OF VILLAGE AND PO KHUMTAI, MORAN, PS MORANHAT, DIST
SIVASAGAR, ASSAM 785670

Advocate for the Petitioner : DR. B N GOGOI,

Advocate for the Respondent : MR. S S BAROOAH,

In
Intest. Cas. Case No. 7274/2023
With
Intest. Cas. Case No. 7274/2023
(Filing Number)

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

20.02.2026

[1] Heard Dr. B.N. Gogoi, the learned counsel for the applicants. Also heard Mr. S.S. Barooah, the learned counsel for the respondent.

[2] This interlocutory application, under Section 5 of the Limitation Act, 1963 has been filed by the applicants praying for condonation of delay of 623 days in filing the connected Intest. Cas. challenging the judgment and order dated 26.11.2021, passed by the court of the learned District Judge, Kamrup(M), Guwahati in Succession Case No. 179/2012.

[3] The learned counsel for the applicants has submitted that the applicant No. 1 was the lawful wife of the deceased Amal Baruah and who died in a road traffic accident on 04.01.2012.

[4] At the time of his death, the husband of the applicant No. 1 was UB Constable posted at Goshala Police Outpost, Maligaon, in the

district of Kamrup(M).

[5] The applicant No. 1 after the death of her husband had filed an application under Section 372 of Indian Succession Act, 1925 before the court of the learned District Judge, Kamrup(M) for grant of succession certificate.

[6] By judgment dated 26.11.2021, passed in Succession Case No. 179/2012, the court of the learned District Judge, Kamrup(M) had disposed of the aforesaid succession certificate by directing that the pensionary/service benefit to the deceased shall be divided into four equal shares amongst the present appellant and her sons namely, Nayanmani Baruah and Palashjyoti Baruah as well as the opposite party Sangita Baruah.

[7] The applicants being aggrieved with the aforesaid judgment has approached this court by filing the connected Testamentary case. However, for filing the aforesaid case, the delay of 672 days has occurred.

[8] The learned counsel for the applicants has submitted that the delay in approaching this court within the prescribed period of limitation has been caused due to the reasons stated in the affidavit-in-reply filed by the present applicants on 26th September, 2025.

[9] He submits that the applicant No. 1 was suffering from the ailments like, Gall Bladder stone, and other abdominal ailments.

[10] He further submits that she was also doing daily wage work

and had to remain busy in caring her minor sons, who have appeared in Higher Secondary Examination in the year 2021.

[11] The learned counsel for the applicants submits that the delay caused in approaching this court in filing the connected appeal was not intentional delay and the circumstances due to which delay has been caused were beyond her control and as such, he prays for condoning the delay of 623 days in filing the connected Intest Cas.

[12] On the other hand, Mr. S.S. Barooah, the learned counsel for the respondent has submitted that the connected appeal has been filed after a huge delay of 623 days, which has not been properly explained by the applicants. He submits that there is no infirmity in the judgment of the trial court whereby, one share was given each to both the wives of the deceased and one share each to the sons of the present appellant.

[13] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record.

[14] Though while considering the application under Section 5 of the Limitation Act, 1963 a justice oriented approach has to be taken by court in dealing with such an application, however, when the delay in approaching the court is a huge delay of 623 days as in the instant case, it is incumbent on the applicants to explain the delay properly, however, after going through the cause of delay shown in the application filed by the present applicants, this court is not

convinced that said cause may be regarded as sufficient cause which prevented the applicants in preparing the connected testamentary appeal within prescribed period of limitation.

[15] After going through the condonation of delay application as well as additional affidavit, filed by the applicants this court is of the considered opinion that the applicants has failed to establish that she was prevented by sufficient cause in approaching this court within prescribed period of limitation. Accordingly, this court is constrained to reject the prayer for condoning the delay of 623 days.

[16] This interlocutory application is accordingly dismissed.

JUDGE

Comparing Assistant