

GAHC010182092023



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

Case No. : I.A.(Civil)/2389/2023

RAJU HAZARIKA
S/O LATE INDRA HAZARIKA
RESIDENT OF GOROIMARI, AIRFORCE ROAD PO SALONIBARI,
HOLESWAR, 784104, DIST SONITPUR, ASSAM

VERSUS

SAILENDRA KUMAR GOSWAMI AND ANR.
S/O LATE TARUN CHANDRA GOSWAMI, PRESENTLY WORKING AS
MANAGER OF HATIALI TEA ESTATE, PO HATIALI SIDING, 786184, EARLIER
WORKING AS MANAGER OF MUTTUCK TEA ESTATE, PO AND PS
LAHOWAL, DIST DIBRUGARH, ASSAM

2:MESSR M.K JOKAI AGRI PLANTATION PVT. LTD.
FORMERLY KNOWN AS M.K SHAH EXPORTS LIMITED
REGISTERED OFFICE 62/13M PRAMATHESH BARUAH SARANI
FORMERLY BALLYJUNGE CIRCULAR ROAD
KOLKATA 700019
WEST BENGAL

Advocate for the Petitioner : MR S KHOUND,

Advocate for the Respondent : ,

Linked Case :

RAJU HAZARIKA

VERSUS

SAILENDRA KUMAR GOSWAMI AND ANR. B

Advocate for : MR S KHOUND

Advocate for : appearing for SAILENDRA KUMAR GOSWAMI AND ANR. B

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 19.08.2024

Heard Mr. S. Khound, learned counsel for the applicant.

Though as per office note dated 21.11.2023 notice upon the respondent no. 2 stands completed, none represents respondent no. 2 today when the matter is called.

It appears from the affidavit of service filed by the applicant in terms of this Court's order dated 22.04.2024, that the respondent No. 1 has received the notice on 05.09.2023.

Further there is no representation on behalf of respondent No. 1 either when the matter was called.

As such the instant application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 75 days caused in preferring the connected Regular First Appeal against impugned Judgment and Decree dated 15.02.2023 passed by the learned Civil

Judge, Dibrugarh in Title Suit No. 62/2015 (now Civil Judge, Senior Division, Dibrugarh) is being taken up for disposal.

Mr. S. Khound, learned counsel for the applicant submits that the delay is unintentional and the same has been caused due to the delay taken by the office in furnishing the certified copy of the impugned judgment.

I have given prudent consideration to the arguments made by the learned counsel for the applicant and also perused the averments and grounds stated in the instant condonation application.

Paragraph 3 and 4 of the said application is reproduced hereunder for ready reference:-

“3) That the certified copy for the Judgment and Decree dated 15-02-2023 was applied by the Petitioner through his counsel vide Petition No.526/2023. The application was submitted on 15-02-2023, but the said petition was numbered on 21-02-2023. The folio was sent to the Court of Civil Judge, Dibrugarh on 22-02-2023 and the record was received on 28-02-2023 from the Court of Civil Judge, Dibrugarh. The learned advocate gave supply on 25-07-2023 and the certified copy of the Judgment was furnished on 25- 07-2023. On 31-07-2023, the Petitioner's counsel requested for a Certificate to enable the petitioner to prefer an appeal before the Hon'ble Gauhati High Court. Accordingly on 01- 08-2023, a certificate was issued by the Civil Judge, Junior Division No.01, Dibrugarh, wherein it is evident that a report was called for from the Dealing Assistant of the copy branch of the District & Sessions Judge establishment, Dibrugarh. From the report dated 01-08-2023, it is certified that the delay caused in furnishing the certified copy was from the copy branch.

4) That the Regular First Appeal was filed on 28- 07-2023. That the delay,

of 75 days caused in filing the Regular First Appeal is not at all intentional but the same is attributable to delay in furnishing of certified copy of the Judgment and Decree dated 15-02-2023. The Petitioner further states that drafting of the Appeal took some time as necessary documents had to be furnished from the Learned Court Below at Dibrugarh and thereafter sent to the counsel of the Petitioner at Guwahati."

Apparent that the delay of 75 days was caused due to the delay of the office of the Court of Civil Judge, Dibrugarh in furnishing the certified copy of the impugned judgment.

In view of the above, I am of the considered view that the delay occurred in filing the appeal is sufficient and bona-fide.

As such the delay of 75 days caused in filing the Regular First Appeal is condoned.

I.A. Stands allowed.

Let Registry register the accompanying RFA.

Disposed of.

JUDGE

Comparing Assistant