

GAHC010210862025



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

Case No. : CRP(IO)/409/2025

MD OMAR ALI MONDAL AND ANR
S/O LATE KAZIM UDDIN MONDAL, RESIDENT OF VILL. KAZIPARA PART-II
(SINGARPAR), WARD NO. 3, P.O. AND P.S. CHAPAR, DIST. DHUBRI, ASSAM,
PIN- 783371

2: MD. TOYAZ UDDIN MONDAL
S/O LATE KAZIM UDDIN MONDAL
RESIDENT OF VILL. KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S. CHAPAR
DIST. DHUBRI
ASSAM PIN 78337

VERSUS

JAYNAL KHAN AND 15 ORS.
S/O LATE MAHAR KHAN, RESIDENT OF VILL- KAZIPARA PART-II
(SINGARPAR), WARD NO. 3, P.O. AND P.S. CHAPAR, DIST. DHUBRI, ASSAM,
PIN- 783371

2:MD. KAZIM UDDIN KHAN
S/O LATE MAHAR KHAN
P/R/A VILL- DHALKHATA (DHANTOLA)
P.O.- BAITAMARI
P.S. AND DIST- BONGAIGAON
ASSAM
PIN-783380

3:MOSSTT. ONGFUL BEWA
D/O MAHAR KHAN
W/O LATE AHMED SK
VILL- KOLABARI
P.O. AND P.S.- CHAPAR
DIST- DHUBRI

ASSAM
PIN-783371

4:MOSSTT. BOKFUL BEWA
D/O LATE MAHAR KHAN
W/O LATE HAMID SK
VILL- KACHUTOLA
P.O.- KHALUWAPARA
P.S.- JOGIGHOPA
DIST- BONGAIGAON
ASSAM
PIN-783382

5:ON THE DEATH OF SARA KHATUN
D/O LATE MAHAR KHAN
W/O LATE ASRAB ALI
REPRESENTED BY HER SON (I) SAFAR ALI AND HER DAUGHTER (II)
ASMA KHATUN
R/O VILL- JALIKURA
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

6:ON THE DEATH OF AYESHA KHATUN
D/O LATE MAHAR KHAN
W/O MOKBUL ALI
REPRESENTED BY HER SONS (I) ASABULLAH SK AND (II) ASABUDDIN SK
AND (III) KHURSHID ALOM
R/O VILL- BOWALMARI
P.O.- KACHUTOLA
P.S.- JOGIGHOPA
DIST- BONGAIGAON
ASSAM
PIN-783382

7:MD NOWSHAD ALI
S/O JASER ALI
R/O KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

8:MD. MUSA ALI KHAN
S/O LATE ASMAT ALI
R/O KAZIPARA PART-II (SINGARPAR)

WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

9:MD. SAFAR ALI KHAN
S/O LATE ASMAT ALI
R/O KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

10:MD. SULTAN ALI KHAN
S/O LATE ASMAT ALI
R/O KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

11:MD. SHAHJAHAN ALI KHAN
S/O LATE ASMAT ALI
R/O KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

12:MD. SHAHAJUDDIN ALI KHAN
S/O LATE ASMAT ALI
R/O KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

13:MD. EYA KHAN
S/O MD. JAYNAL ABEDIN
R/O KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI

ASSAM
PIN-783371

14:MD. HARUN RASHID
S/O MD. ABDUL JALIL
R/O KAZIPARA PART-II (SINGARPAR)
WARD NO. 3
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-783371

15:THE STATE OF ASSAM
REPRESENTED BY THE DISTRICT COLLECTOR
DHUBRI
P.O.
P.S. AND DIST- DHUBRI
ASSAM
PIN-783301

16:THE ASSISTANT SETTLEMENT OFFICER
CHAPAR
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM
PIN-78337

Advocate for the Petitioner : MR. A A R KARIM, MR S RAHMAN

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

27.02.2026

Heard Mr. A.A.R. Karim, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India read with Section 151 of the CPC, the petitioners have challenged the order dated 09.07.2025, passed by the learned Civil Judge (Junior Division) No. 2, Dhubri at

Bilasipara (trial court hereinafter), in Petition No. 611/2025, which was registered as Misc. Case No. 83/2025, arising out of Title Suit No. 69/2017.

3. It is to be noted here that vide impugned order dated 09.07.2025, the learned trial court had rejected the petition filed by the petitioners for amendment of the written statement.

4. Mr. Karim, learned counsel for the petitioners submits that the respondent herein, as plaintiff, had filed one title suit, being Title Suit No. 69/2017 and therein, the petitioners herein, as defendants, had filed written statement and while the case was pending at the stage of cross-examination of PWs, the petitioners herein on 02.06.2025, had filed one petition, No. 611/2025, under Order 6 Rule 17 read with Section 151 of the CPC, for amendment of the said written statement and then upon the said application, the learned trial court had registered a Misc. Case No. 83/2025, and thereafter, on 18.06.2025, the respondent herein had filed had written objection. Thereafter, hearing both the parties, the learned trial court had dismissed the petition, vide impugned order dated 09.07.2025, on the ground that there is delay of 7 years in filing the petition, that too with no sufficient explanation and by filing the amendment petition, the petitioners herein will rescind from the original defence and since the trial has been significantly progressed, the same will derail the progress of the trial and it will also cause prejudice to the respondent.

4.1. Mr. Karim further submits that none of the grounds assigned by the learned trial court, for rejecting the petition, are just or reasonable and that for proper adjudication of the dispute between the parties, amendment of the written statement is very much necessary, else there will be multiplicity of proceeding and petitioners herein will suffer serious prejudice if the petition is not allowed.

4.2. Mr. Karim also submits that for proper adjudication of the matter, amendment of the written statement is permissible under the law of amendment and it will cause no prejudice to any of the parties and the amendment sought to be introduced would not change the nature and character of the suit also. Under such circumstances, Mr. Karim has contended to allow this petition and set aside the impugned order dated 09.07.2025.

5. Having heard the submission of Mr. Karim, learned counsel for the petitioners, I have carefully gone through the petition as well as the documents placed on record and also perused the order dated 09.07.2025.

6. It appears that the learned trial court had dismissed the petition mainly on following grounds that:-

- (i) the amendment is delayed by over 7 years, with no sufficient explanation;
- (ii) the new pleadings constitute a departure from the original defence and the same is not a mere elaboration; and
- (iii) allowing the amendment at this stage would prejudice the plaintiff and derail the progress of the trial already underway.
- (iv) and the petition does not satisfy the legal test under Order VI proviso to Rule 17 of the CPC.

7. It is to be noted here that a query was put to Mr. Karim, learned counsel for the petitioners, that the suit was filed in the year 2017 and the written statement was filed in the same year, i.e. on 17.08.2017 and as such, as to how he will explain the delay of 7 long years in filing the petition for amendment of the written statement and Mr. Karim could not answer the same properly. However, he submits that one proceeding is pending before the learned District Judge, Dhubri. But, he has not enclosed the same along with this petition.

8. It is also to be noted here that proviso to Rule 17 of Order 6 of the CPC provides that no application for amendment will be filed after the trial has commenced, unless the court comes to the conclusion in respect of due diligence, that the parties could have raised the matter before the commencement of trial.

9. Hon'ble Supreme Court, in the landmark case of **Salem Advocate Bar Association, T.N. v. Union of India**, reported in (2005) 6SCC 344 has noted the history and object of Order VI Rule 17 as follows:-

26. "Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if an application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial."

10. Admittedly, the instant case is pending at the stage of cross-examination of PWs and in that being so, the trial has already been began and as such, the petitioners herein is under obligation to demonstrate the due diligence on his part in filing the petition. Indisputably also the petition for amendment was filed after 7 long years of filing the written statement.

11. But, unfortunately, in the instant case the petitioners have fails to satisfy

the due diligence test required under proviso to Order VI Rule 17 of the Code. The petitioners herein have failed to offer any explanation, let alone a plausible one, for the delay of 7 years in filing the petition and on this count alone, the petition filed by the petitioner is liable to be dismissed, which the learned trial court has rightly did. Further, the impugned order reveals that the learned trial court has categorically observed that the amendment sought to be introduced by the petitioners constituted a departure from the original defence and it is not a mere elaboration and that since the trial has been progressed significantly, the progress will be derailed and prejudice will be caused to the plaintiff, the respondent herein.

12. In that view of the matter, this Court is of the view that the impugned order dated 09.07.2025, by which the learned trial court has dismissed the petition filed by the petitioners for amendment of the written statement, suffers from no perversity requiring any interference of this Court.

13. Another aspect of the matter is that the petitioner has filed similar type of petition before the learned trial court on 24.04.2018 and the same was also dismissed, vide order dated 06.03.2019.

14. In the result, this Court finds no merit in this petition and accordingly, the same stands dismissed at the motion stage itself.

Comparing Assistant

JUDGE