

GAHC010217622024



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

Case No. : I.A.(Civil)/3541/2024

ON THD DEATH OF BHANU DEY HIS LEGA HEIRS SANDHYA DEY AND ORS
W/O LATE BHANU DEY, R/O J.P.R. RAILWAY COLONY, P.S. and DIST.
JORHAT, PIN 785001

2: SRI BISHNU DEY

S/O LATE BHANU DEY
R/O J.P.R. RAILWAY COLONY
P.S. and DIST. JORHAT
PIN 785001

3: MS MONI DEY

W/O SRI KHOKAN DEY
R/O MARIANI KENNEDY PARK
MARIANI
JORHA

VERSUS

ARABINDA ROY
S/O LATE AMULYA BHUSAN ROY, R/O J.P.R. RAILWAY COLONY, P.S. and
DIST. JORHAT., PIN 785001

Advocate for the Petitioner : DR. R SARMAH,

Advocate for the Respondent : ,

IN
RSA Case No. 291927/2017
WITH
RSA Case No. 291927/2017(filing number)
WITH
I.A.(Civil) Case No. 2979/2024

SRI BHANU DEY

VERSUS

SRI ARABINDA ROY

Advocate for : DR.R SARMAH
Advocate for : appearing for SRI ARABINDA ROY

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

07.04.2025

- 1.** Heard Dr. R. Sarmah, the learned counsel for the applicants.
- 2.** This application under Section 5 of the Limitation Act, 1963 has been filed by the applicants for condoning the delay of 117 days in substituting the legal heirs of the applicants in I.A.(Civil) No. 3456/2017, which was filed by the deceased applicant, namely, Bhanu Dey for

condoning the delay in filing the connected regular second appeal.

3. The learned counsel for the applicants has submitted that in the connected I.A. (Civil) No. 3456/2017, notices were issued to the legal representatives of the deceased sole respondent, namely, Arabinda Roy, even through newspaper publication. However, when no one appeared in the said interlocutory application, i.e., I.A. (Civil) No. 3456/2017, this Court was pleased to appoint Mr. A.K. Sahewalla, as an Amicus Curiae to represent the estate of the deceased, as per the provisions of Order XXII Rule 4A.

4. The learned counsel for the applicants has submitted that as the sole respondent, namely, Arabinda Roy (since deceased) has no legal heirs or legal representatives. Hence, it would be futile to issue notice to such legal representatives or legal heirs in this case. Hence, same may be represented.

5. I have considered the submissions made by the learned counsel for the applicants and have gone through the order dated 11.03.2024 and 29.05.2024, passed in I.A. (Civil) No. 3456/2017.

6. As it appears that the deceased has no legal heirs or legal representatives, hence, the issuance of notice is waived in this case.

7. After considering the grounds mentioned in paragraph No. 6 of the application for condoning the delay, this Court is of the considered opinion that the applicants had shown sufficient cause for approaching this Court after 117 days beyond the period of limitation in filing the connected application under Order XXII Rule 3, (I.A. (Civil) No. 2979/2024).

8. This interlocutory application is, therefore, allowed and the delay of

117 days is hereby condoned.

JUDGE

Comparing Assistant