

GAHC010281272025



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

**Case No. : I.A.(Civil)/111/2026**

SANKAR DAS  
S/O SRI ABHAY CHARAN DAS @ ASHU R/O PANIGAON, DURGABARI,  
A.T.ROAD, NAGAON TOWN, DIST. NAGAON, ASSAM, PIN 782001

VERSUS

ABHISHEK SAHA AND ORS  
S/O LATE LITAN SAHA AND LATE UJJAL SAHA, PERMANENT RESIDENT  
OF R.K ROAD, MOUZA TOWN, PS SADAR, DIST NAGAON, ASSAM

2:SMTI BINITA SAHA  
D/O LATE LITAN SAHA AND LATE UJJAL SAHA  
PERMANENT RESIDENT OF R.K ROAD  
MOUZA TOWN  
PS SADAR  
DIST NAGAON  
ASSA

**Advocate for the Petitioner** : S KALITA, MR. M KALITA,MR. P DAS

**Advocate for the Respondent** : ,

Linked Case : I.A.(Civil)/3417/2019

SRI SANKAR DAS  
S/O SRI ABHAY CHANDRA DAS @ ASHU  
R/O PANIGAON  
DURGABARI

A.T. ROAD  
NAGAON  
DIST. NAGAON  
ASSAM  
PIN 782001

VERSUS

SMT UJJLA SAHA and ANR  
W/O LITAN SAHA  
R/O THAKUR RAM KRISHNA ROAD  
MOUZA TOWN  
DIST. NAGAON  
ASSAM  
PIN 782001

2:LALIT SAHA  
S/O SATISH SAHA  
R/O THAKUR RAM KRISHNA ROAD  
MOUZA TOWN  
DIST. NAGAON  
ASSAM  
PIN 782001

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Advocate for : MR. S KALITA  
Advocate for : appearing for SMT UJJLA SAHA and ANR

Linked Case : I.A.(Civil)/113/2026

SANKAR DAS  
S/O LATE ABHAY CHARAN DAS @ ASHU DAS RESIDENT OF PANIGAON  
DURGABARI AT ROAD  
NAGAON  
DIST NAGAON ASSAM 782001

VERSUS

ABHISHEK SAHA AND ORS  
S/O LATE LITAN SAHA AND LATE UJJAL SAHA  
PERMANENT RESIDENT OF R.K ROAD  
MOUZA TOWN  
PS SADAR  
DIST NAGAON  
ASSAM

2:SMTI BINITA SAHA  
D/O LATE LITAN SAHA AND LATE UJJAL SAHA  
PERMANENT RESIDENT OF R.K ROAD  
MOUZA TOWN  
PS SADAR  
DIST NAGAON  
ASSAM

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Advocate for : S KALITA  
Advocate for : appearing for ABHISHEK SAHA AND ORS

Linked Case : I.A.(Civil)/114/2026

SANKAR DAS  
S/O LATE ABHAY CHARAN DAS @ ASHU DAS RESIDENT OF PANIGAON  
DURGABARI AT ROAD  
NAGAON  
DIST NAGAON ASSAM 782001

VERSUS

SRI ABHISEKH SHA AND ORS  
S/O LATE LITAN SAHA AND LATE UJJAL SAHA  
PERMANENT RESIDENT OF R.K ROAD  
MOUZA TOWN  
PS SADAR  
DIST NAGAON  
ASSAM

2:SMTI BINITA SAHA  
D/O LATE LITAN SAHA AND LATE UJJAL SAHA  
PERMANENT RESIDENT OF R.K ROAD  
MOUZA TOWN  
PS SADAR  
DIST NAGAON  
ASSAM

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Advocate for : S KALITA  
Advocate for : appearing for SRI ABHISEKH SHA AND ORS

Linked Case : RSA/200/2017

SRI SANKAR DAS  
S/O SRI ABHAY CHARAN DAS @ ASHU R/O PANIGAON  
DURGABARI  
A.T.ROAD  
NAGAON TOWN  
DIST. NAGAON  
ASSAM  
PIN 782001

VERSUS

SMT UJJLA SAHA and ANR  
W/O LITAN SAHA

2:LALIT SAHA

BOTH ARE R/O THAKUR RAM KRISHNA ROAD  
MOUZA TOWN  
DIST. NAGAON  
ASSAM  
PIN 782001

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Advocate for : MR. A C KALITA

Advocate for : MR. B CHAKRAVARTY appearing for SMT UJJLA SAHA and ANR

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

**ORDER**

**04.02.2026**

1. Learned counsel Mr. P. Das is present for the appellant/applicant Sankar Das who was the defendant in Title Suit No. 60/2006.
2. The suit was decreed in favour of the plaintiffs, Smt. Ujjala Saha and Shri Litan Saha. The defendants then preferred an appeal being T.A. No. 10/2023 and this appeal was not allowed and dismissed vide impugned judgment and decree dated 07.01.2017, passed by the learned Civil Judge (Sr. Division) at Nagaon. The second appeal was preferred by the defendant No. 2, Sankar Das, whereas, the co-defendant did not prefer any appeal. The appeal was registered

as RSA No. 200/2017, which was dismissed vide order dated 12.09.2019.

3. A restoration petition was filed and notices were issued to Smt. Ujjala and Shri Litan Saha. Later it was learnt that both Smt. Ujjala and Shri Litan Saha have passed away and the application for restoration being I.A.(Civil) No. 3417/2019 was pending. Ujjala Saha passed away on 12.02.2023.

4. An application for substitution of legal heirs of both Ujjala and Litan Saha was filed as well as an application for condonation of delay was also filed as the defendants have learnt much later about the death of Ujjala and Litan Saha who are also spouses. Now, the legal heirs of Ujjala and Litan Saha have brought up Title Execution No. 11/2017 and both the legal heirs are pursuing the Title Execution despite their knowledge that a second appeal is pending against them and despite their knowledge that an application for restoration of the dismissed second appeal has been filed.

5. If this Court awaits for condonation of delay, the execution matter will be decided to the prejudice of the defendants who are the appellants in RSA No. 200/2017. They are also the judgment debtors in Title Execution No. 11/2017. When summons were issued vide order dated 06.06.2025, more particularly, Annexure-3 of the application under Section 151 of the CPC, the present applicants/judgment debtors learnt about the progress of the Title Execution Case No. 11/2017.

6. Learned counsel for the applicants have relied on the decision of this Court in ***Ramesh Chandra Kalita Vs. Mira Patwari & Ors*** reported in ***1997 (1) GLJ 225***, wherein it has been held that :-

*“A fair interpretation of Order 41 Rule 3 A of the Code of Civil Procedure would be that it requires that the appellant presents an appeal after expiry of the period of limitation, it shall be accompanied by an application supported by affidavit stating the reasons for delay in preferring the appeal along with the memorandum of appeal. After all Order 41 Rule 3 A is a procedural law and this*

*procedural law must be interpreted in such a manner that to advance the cause of justice If the power to grant the stay is not given in exceptional cases this will cause sheer injustice to an appellant who may be prevented from filing an appeal in time because of compelling circumstances. After all law cannot be allowed or utilised to cause injustice. In such a situation the Court can exercise the power under section 151 of the Code of Civil Procedure to grant relief in such a case if the justice demands it. That is the mandate of law and is the requirement of law. Accordingly this revision application is allowed and the stay application shall be considered by the lower appellate Court in accordance with law.”*

7. The applicants have also relied on the decision of the High Court of Judicature at Bombay in ***Shriram General Insurance Company Limited Vs. Sou. Jyoti Vithoba Nahire & Anr*** reported in ***2024 ACJ 65***, wherein it has been held that:-

*“34. Although the Learned Counsel have referred to the decision of the Hon'ble Supreme Court on the interpretation of the word shall in Sub-Rule (1) of Rule 3-A of Order XLI in the case of **State of M.P. and Anr. Vs. Pradeep Kumar and Anr.(2000) 7SCC 372**, however, no decision of the Hon'ble Supreme Court with respect to the interpretation/construction of the word 'shall in subrule (3) of Rule 3-A of Order XLI contrary to the decision of the Division Bench of this Court in the case of *Bhagwan Ganpatrao God-say Vs. Kachrual Bastimal Samdariya and connected matters (supra)* has been brought to my notice*

*35. Ergo, considering the authoritative pronouncement of a Division Bench of this Court in the case of *Bhagwan Ganpatrao Godsai Vs. Kachrual Bastimal Samdariya and connected matters (supra)* that the word 'shall' used in sub-rule (3), of Rule 3 A in Order XLI of the CPC be construed as permissive and not mandatory in the absence of any decision to the contrary, I am bound by the same.*

*36. In this view of the matter, the applications for stay of the impugned judgment and award passed under the MV Act in a proposed First Appeal can be considered for ad-interim/interim stay even if the condonation of delay application is pending.”*

8. The applicants have also relied on a decision of this Court in ***Smt. Malabika Das vs. Kandarpa Baruah & Ors*** in connection with ***CRP/57/2025***,

wherein vide order dated 09.05.2025, it has been held that:-

*“15. In that view of the matter, this Court does not find that the learned Appellate Court had committed an error in exercise of its jurisdiction, for which, the instant petition stands dismissed on the merits also.*

*16. Before parting with the record, this Court finds it relevant to observe that the application under Section 151 of the Code filed by the petitioner was not in the jurisdiction which was vested upon the learned Appellate Court and it appears that the counsel appearing on behalf of the petitioner before the learned Appellate Court had on an erroneous presumption laid emphasis upon the Appeal and the Application seeking stay which were yet to be registered. The consequences of such presumption was that the petitioner sought to rely upon the Appeal as well as the Application seeking stay of the execution while moving the application filed under Section 151 of the Code This was clearly not permissible as the Appeal or the Stay application could not have been taken into consideration by the learned Appellate Court unless the delay was condoned.*

*17. Accordingly, this Court observing that the mistake on the part of the petitioner was In fact a mistake of the counsel representing the petitioner before the learned Appellate Court grants liberty to the petitioner to file an appropriate application under Section 151 of the Code in the proceedings being Misc (1) Case No.09/2025 and placing all such materials as deemed fit for consideration of the prayer of stay of the execution proceedings pending disposal of the condonation application.”*

9. The applicants have already filed an application under Section 5 of the Limitation Act for delay in filing the substitution of legal heirs which has been registered as I.A. (Civil)/111/2026.

10. I have considered the submission on behalf of the applicant who has submitted the aforementioned decisions of this Court as well as the High Court of Judicature at Bombay. It appears that an interim order may be passed relating to the suit property of Title Execution Case No. 11/2017, atleast till the next date of listing. Thereby, the Execution Court is directed not to proceed with the execution of the suit property in connection with Title Execution No. 11/2017, till 11.03.2026.

11. Meanwhile, issue notices to the legal heirs of the decree holders through *Dasti*

service returnable on 11.03.2026.

**JUDGE**

**Comparing Assistant**