

GAHC010055192023



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

**Case No. : I.A.(Civil)/885/2023**

ON THE DEATH OF FAJAR ALI

HIS LEGAL HEIRS SORHAB ALI AND ORS.

2: SARA KHATUN

W/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

3: SOBITAN NESSA  
S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

4: HAFIZUR UDDIN  
S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

5: ASIYAT JAMAL

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

6: SHAHIDUL ISLAM

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

7: HASHEM ALI

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

8: MUFAJJEL HOSSAEN

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

9: HAIDAR ALI

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

10: SAFIKUL ISLAM

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

11: ISMAIL HUSSAIN

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

12: ROFIKUL ISLAM

S/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

13: TARA BHANU

D/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

14: FORIDA KHATUN

D/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA

ASSAM  
PIN 781319

15: NUR NEHAR KHATUN

D/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

16: MOMOTAZ BEGUM  
D/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319

17: REHENNA KHATUN

D/O LATE FAJAR ALI  
PERMANENT RESIDENT OF VILLAGE RAMPUR  
P.O. NIZ RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN 781319  
VERSUS

ON THE DEATH OF SORHAB ALI  
HIS LEGAL HEIRS BOSIRAN NESSA and ANR

2:RUSTAM ALI

S/O MD. SORHAB ALI  
BOTH ARE R/O VILL. SUNDARPUR  
P.S. MATIA  
DIST. GOALPARA  
ASSAM.

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Advocate for : G UDDIN  
Advocate for : MR. S Ali appearing for ON THE DEATH OF SORHAB ALI

**BEFORE  
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

**ORDER**

**Date : 30.08.2024**

Heard Mr. A. K. Azad, learned counsel for the applicant. Also heard Mr. H. Das, learned counsel for the respondents.

This is an application under Order 22 Rule 9 of CPC, 1908 for setting aside the abatement of the RSA No. 167/2010.

Paragraph 2 and 3 of the aforesaid application is reproduced hereunder for ready reference:-

*“2. That, during the pendency of the said Regular Second Appeal No. 167/2023, the sole Appellant namely Fajar Ali died on 01-06-2018. The applicants are the permanent resident of village Rampur under kalgachia revenue Circle in the district of Barpeta. The applicants are residing in a remote area as mentioned above. The father of the applicants was an illiterate person and before his death he was suffering from serious illness caused by the asthma along with other old age disease and in resulting of that he was in a death bed condition almost two years. From that period of time, there was communicational gap between the Appellant and his earlier engaged counsel. Later on after death of the sole Appellant, the Applicants could not able to cooperate with their engaged counsel in time. Thereafter, Covid-19 Pandemic situation breakout from the year of 2020 and paralyzed the function of the court almost 2 years. In the year of 2022, the legal heirs of the sole Appellant started to communicate the engaged counsel and they decided to engage the present sets of counsels in the month of February 2023. Thereafter they came to known about the current*

*status of their case.*

*3. That the applicants beg to state that, due to aforesaid facts and circumstances the substitution application has not been filed within the period of limitation as prescribe under the Code of Civil Procedure, 1908 within 90 days (Ninety days) from the date of death of applicant namely Fajar Ali in R.S.A. No. 167/2010. As a result of which due to death of the sole appellant the appeal automatically got abated. The rights to sue survive in this second appeal, so it is required to file the present petition along with condonation petition as well as substitution petition for adjudication of the case.”*

Apparent that appropriate legal rights of the applicant is to be decided in RSA No. 167/2010.

Since, the delay in filing the substitution application, has been condoned by this Court by order dated 30.08.2024 in I.A.(Civil) No. 883/2023, the instant application accordingly stands allowed.

Disposed of.

**JUDGE**

**Comparing Assistant**