

GAHC010050932024



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

Case No. : I.A.(Civil)/1654/2024

ON THE DEATH OF ANUPUMA CHAKRABORTY HIS LEGAL HEIRS PINAK
KANTI CHAKRABORTY AND ANR
W/O LATE PIJUSH KANTI CHAKRABORTY, DURGA SHANKAR LANE,
AMBIKAPATTY, SILCHAR TOWN, DIST. CACHAR, ASSAM.

2: SRI ABHIJIT CHAKRABORTY

S/O LATE PIJUSH KANTI CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
SILCHAR TOWN
DIST. CACHAR
ASSAM

VERSUS

SRI BINOY KRISHNA CHAKRABORTY,
S/O LATE BIRENDRA KUMAR CHAKRABORTY, DURGA SHANKAR LANE,
AMBIKAPATTY, SILCHAR TOWN, DIST. CACHAR, ASSAM.

Advocate for the Petitioner : MR.R SARMA

Advocate for the Respondent : MR. S D PURKAYASTHA

Linked Case : I.A.(Civil)/1651/2024

ON THE DETAH OF ANUPAMA CHAKRABORTY HER LEGAL HEIRS PINAK
KANTI CHAKROBORTY AND ANR

S/O LATE PIJUSH KANTI CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
SILCHAR TOWN
DIST. CACHAR
ASSAM.

2: SRI ABHIJIT CHAKRABORTY

S/O LATE PIJUSH KANTI CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
SILCHAR TOWN
DIST. CACHAR
ASSAM.
VERSUS

SRI BINOY KRISHNA CHAKRABORTY E
S/O LATE BIRENDRA KUMAR CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
SILCHAR TOWN
DIST. CACHAR
ASSAM.

Advocate for : MR.R SARMA
Advocate for : MR. S D PURKAYASTHA appearing for SRI BINOY KRISHNA
CHAKRABORTY E

Linked Case : I.A.(Civil)/1653/2024

ON THE DETAH OF ANUPAMA CHAKRABORTY HER LEGAL HEIRS PINAK
KANTI CHAKROBORTY AND ANR
S/O LATE PIJUSH KANTI CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
SILCHAR TOWN
DIST. CACHAR
ASSAM.

2: SRI ABHIJIT CHAKRABORTY

S/O LATE PIJUSH KANTI CHAKRABORTY
DURGA SHANKAR LANE

AMBIKAPATTY
SILCHAR TOWN
DIST. CACHAR
ASSAM.
VERSUS

SRI BINOY KRISHNA CHAKRABORTY E
S/O LATE BIRENDRA KUMAR CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
SILCHAR TOWN
DIST. CACHAR
ASSAM.

Advocate for : MR.R SARMA
Advocate for : MR. S D PURKAYASTHA appearing for SRI BINOY KRISHNA
CHAKRABORTY E

Linked Case : I.A.(Civil)/1652/2024

ON THE DETAH OF ANUPAMA CHAKRABORTY HER LEGAL HEIRS PINAK
KANTI CHAKROBORTY AND ANR
S/O LATE PIJUSH KANTI CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
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SRI BINOY KRISHNA CHAKRABORTY E
S/O LATE BIRENDRA KUMAR CHAKRABORTY
DURGA SHANKAR LANE
AMBIKAPATTY
SILCHAR TOWN

DIST. CACHAR
ASSAM.

Advocate for the applicant(s): Mr. R Sarma

Advocate for the respondent(s): Mr. SD Purkayastha

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

24.06.2024

Heard Mr. R Sarma, the learned counsel appearing on behalf of the applicants. Also heard Mr. SD Purkayastha, the learned counsel appearing on behalf of the respondent.

2. All these four applications are taken up together for consideration taking into account that these applications have been filed on account of death of the sole appellant on 31.03.2023.

3. IA(C)No.1651/2024 and IA(C)No.1654/2024 are applications seeking condonation of delay in filing an application for setting aside abatement and for substitution of the legal representatives of the sole appellant, who has expired.

4. The grounds which have been mentioned in the application is that the

applicants were no aware of the legal procedures that on the death of the appellant, there is a requirement for substitution of his legal representatives.

5. This Court has duly taken note of the reasons which have been mentioned and from the above, it is the opinion of this Court that the applicants herein were kept at dark by the learned counsel in not apprising that it is the requirement of law upon the death of the appellant or any party to the proceedings having a cause of action and the right to sue subsisting to substitute their legal representatives for the continuation of the appeal. Taking into account that it is a fault on the part of the counsel, this Court is of the opinion that the delay needs to be condoned, *inasmuch as*, on account of the fault of the counsel, the party cannot be prejudiced. Accordingly, IA(C)No.1651/2024 and IA(C)No.1654/2024 stand allowed.

6. This Court, however, cannot also be unmindful of the fact that it is a case of sheer negligence and carelessness and, as such, imposes a costs of Rs.5000/- upon the applicants.

7. IA(C)No.1652/2024 is an application for setting aside abatement and taking into account the reasons for which the delay has been condoned, this Court is also of the opinion that it is a fit case for setting aside the abatement in so far as the appellant is concerned. Else the applicants would be completely non-suited. Accordingly, the interlocutory application being IA(C)No.1652/2024 is allowed.

8. IA(C)No.1653/2024 is an application for substitution of the legal

representatives of the sole appellant, whose names are duly mentioned at paragraph 2 of the instant application. Taking into account that the right to sue survives on the legal representative of the appellant. This Court substitutes the original appellant by the applicant Nos.1 and 2 of the instant application. The applicant Nos.1 and 2 would be arrayed as appellant No.1(i) and 1(ii) in the accompanying second appeal being RSA No.246/2015. Accordingly, the interlocutory application stands allowed.

9. This Court, however, makes it clear that the instant order is subject to the deposit of Rs.5000/- as costs.

10. The applicants herein are directed to deposit the amount of Rs.5000/- to a charitable institution 'Snehalaya Home for Boys' located at AK Dev Road, Dhirenpara Guwahati-781025, Assam and the receipt thereof be submitted before the Registry of this Court by 19.07.2024. The applicants, along with the receipt of deposit of costs as directed shall file a fresh Memo of parties before the Registry of this Court and the Registry shall on the basis of the instant order as well as the amended Memo of parties make necessary corrections in the cause-title of the accompanying second appeal and also update the same in the CIS.

11. Interlocutory applications accordingly stand disposed of

JUDGE

Comparing Assistant