

GAHC010055192023



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

Case No. : I.A.(Civil)/883/2023

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: REHENA KHATUN

D/O LATE FAJAR ALI
PERMANENT RESIDENT OF VILLAGE RAMPUR
P.O. NIZ RAMPUR
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN 78131

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

Advocate for the Petitioner : G UDDIN, P SHARMA,P ADHIKARI,MR A K AZAD

Advocate for the Respondent : MD. S 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 Section 5 of the Limitation Act, 1963 for condonation of delay of 1639 days in filing the accompanying substitution petition.

Mr. A. K. Azad, learned counsel for the applicant submits that due to want of knowledge of the death of the appellant, the delay had occurred in filing the accompanying substitution petition and as such seeks condonation of the same.

Mr. H. Das, learned counsel for the respondents on the other hand submits that the applicant has not explained the delay sufficiently and therefore warrants no condonation from this Hon'ble Court.

Heard the parties and persued the materials available on record.

Paragraph 2 and 3 of the aforesaid condonation Interlocutory Application is reproduced hereunder for ready reference:-

“2. That, during the pendency of the said Regular Second Appeal No. 167/2010, 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. The rights to sue survive in this second appeal, so it is required to file substitution petition for adjudication of the case.”

Apparent that it is due to want of knowledge about the death of the appellant, the delay of 1639 days have occurred in filing the accompanying substitution application. The aforesaid explanation appears to be sufficient and bona-fide.

Accordingly, in the interest of justice, the said delay of 1639 days is condoned.

Resultantly, the instant Interlocutory Application stands allowed.

Let Registry numbered and register the accompanying

substitution application.

Disposed of.

JUDGE

Comparing Assistant