

GAHC010073572026



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

Case No. : I.A.(Civil)/1484/2026

LAXMI KANTA SHARMA AND ANR
S/O LATE RAM GOPAL SHARMA, PARTNER OF M/S ATLANTA
INTERNATIONAL AND R/O 4C, UTSAV GARDEN, SATI JOYMATI ROAD,
ATHGAON, P.O.- GUWAHATI-781001

2: SMTI ALKA SHARMA
WIFE OF SRI LAXMI KANT SHARMA
PARTNER OF M/S ATLANTA INTERNATIONAL AND R/O 4C
UTSAV GARDEN
SATI JOYMATI ROAD
ATHGAON
P.O.- GUWAHATI-78100

VERSUS

M/S ATLANTA INTERNATIONAL AND 2 ORS
A PARTNERSHIP FIRM, REPRESENTED BY ITS PARTNER, SRI AJAY
SHANKAR JAGATI, HAVING ITS OFFICE AT AAC COMMERCIAL COMPLEX,
S.J. ROAD, ATHGAON, P.O.- GUWAHATI- 781 001, ASSAM

2:AJAY SHANKAR JAGATI
SON OF SRI SITARAM JAGATI
PARTNER OF M/S ATLANTA INTERNATIONAL AND R/O 3RD FLOOR
FLAT NO. 3M
TRANSVILLA
K.C. ROAD
CHATRIBARI
P.O.- GUWAHATI-781008
ASSAM

3:SMTI. MADHU JAGATI
WIFE OF SRI AJAY SHANKAR JAGATI
PARTNER OF M/S ATLANTA INTERNATIONAL AND R/O 3RD FLOOR
FLAT NO. 3M

TRANSVILLA
K.C. ROAD
CHATRIBARI
P.O.- GUWAHATI-781008
ASSA

Advocate for the Petitioner : MR J C GAUR, MS. M GAUR

Advocate for the Respondent : DR ANKIT TODI (FOR CAVEATOR), MS. R JUGLI (FOR CAVEATOR)

Linked Case : FAO/4153/2026

LAZXI KANT SHARMA AND ANR
ASSAM

VERSUS

MS ATLANTA INTERNATIONAL AND 2 ORS
ASSAM

Advocate for : Jagadish Chandra Gaur
Advocate for : appearing for MS ATLANTA INTERNATIONAL AND 2 ORS

BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER

ORDER

Date : 18.09.2026

Heard Mr. J.C. Gaur, learned counsel for the applicant. Mr. A. Todi, learned counsel for the Caveator and Mr. P. Das, learned counsel for the Caveator.

2. The instant application under Section 5 of the Limitation Act has been preferred by the applicant praying for condonation of delay of 139 days in filing the connected appeal FAO against the order dated 16.08.2025, passed by the

learned Civil Judge (Sr. Division) Kamrup, Amingaon, in Misc. (J) Case No.374 of 2024 arising out of Title Suit No. 161 of 2024, thereby rejecting the petition of the applicant under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the parties to arbitration.

3. The applicants herein have stated that, they applicants have filed a connected appeal challenging the validity of the order dated 16.08.2025 passed by the learned Civil Judge (Sr. Division), Kamrup, Amingaon, rejecting the applicants application under Section 8 of the Arbitration and Conciliation Act.

4. It is also stated that prior to filing the instant connected appeal, the applicants had filed a civil revision before this Court and this Court was pleased to dismiss the said civil revision petition on the ground that an appeal ought to have been filed and the said civil revision was disposed of by order dated 01.04.2026, granting the applicants liberty to file an appeal against the order of the Learned Trial Court.

5. The applicants also further submit that the learned Trial Court had heard the matter on 16.08.2025 but the order was passed subsequently and the applicants came to know about the order on the next date fixed which was 14.10.2025 and on coming to know about the order applying for certified true copy which was provided to them on 16.10.2025 and as such, the connected appeal ought to have been filed within 90 days, i.e, 15.11.2025. However, the appellant No.1 was away in Tinsukia due to the demise of a close relative and he returned back only on 23.11.2025 and thereafter, the civil revision petition I.O. 18/2026 was filed on 25.11.2025.

6. However, it came to the notice of the applicants that the order dated 16.08.2025 is appealable under Section 37 of the Arbitration and Conciliation

Act and as such, the applicants had withdrawn the said CRP I.O. No. 18/2026 with liberty to file an appeal which was allowed by this Court by order dated 01.4.2026.

7. The applicant submits that in view of the above reasons, there has been a delay of 139 days in filing the appeal out of which 127 days has occurred due to the proceedings before the wrong forum. Further, the counsel for the applicants had taken 5 days in preparing the memo of appeal and thus the connected appeal could be filed only on 06.04.2026 and thereby a delay of 129 days had been caused in filing the appeal.

8. It is the submission of the learned counsel for the applicant that the delay caused in filing the appeal has occurred due to circumstances beyond the control of the applicants and it was not deliberate or intentional and the delay has been further caused due to the proceedings before the wrong forum and it is therefore pleaded that the delay of 139 days may be condoned.

9. The respondent has also filed an affidavit-in-opposition objecting to the prayer for condonation.

10. The learned counsel for the respondent submits that the delay has not been properly explained by the applicants and reveals lack of due diligence on the part of the applicants.

11. It is also submitted that the application does not constitute sufficient reasons for condonation of delay merely because the applicants were not aware about the order dated 16-08-2025 passed by the Trial Court and that they had taken recourse to wrong proceedings by filing the civil revision petition. It is also stated that the delay was caused and the said proceeding was filed due to their own negligence and failure to avail the proper statutory

remedy available.

12. It is further submitted by the learned counsel for the respondent that the reasons given in the application are vague and each day's delay has not been properly explained. The learned counsel therefore pleads that the instant application may be dismissed for want of sufficient cause.

13. This Court has considered the submissions of the learned counsel for the parties and also perused the pleadings specifically paragraphs 3, 4 and 5 of the application.

14. It has been observed that the main reason for the delay in filing the connected appeal is due to the pendency of the Civil Revision Petition, CRP I.O. 18 of 1926, which was filed before this Court.

15. In the considered view of this Court, the proceeding before a wrong forum cannot be attributed to the applicants, as the failure to avail the appropriate statutory remedy is due to the fault of the counsel and not the applicant.

16. This Court is also of the view that such proceeding before the wrong forum is attributable to the counsel alone and not to the applicant.

17. It is settled law that the applicant/appellant should not be made to suffer due to the error committed by his counsel.

18. In view of the above discussion, this Court is of the view that the applicant has shown sufficient cause for the delay of 139 days in filing the connected appeal. Accordingly, the said delay is condoned. The petition is allowed.

19. The Registry shall register the appeal and list the same for admission after 1 (one) week.

JUDGE

Comparing Assistant