

Assam Schedule VIII. Form No. 143
High Court Form No. (J) 13

ORDER-SHEET FOR CIVIL COURT

DISTRICT : SONITPUR

IN THE COURT OF THE DISTRICT JUDGE, SONITPUR, TEZPUR

Misc. (J) Case No. 30 of 2019

In connection with Misc. (P) Case No. 12/2019

Petitioner: Sri Sambhu Kumar Dey

Serial No. of Orders	Date	Order	Signature
	<u>15-12-2022</u>	<p>Learned counsel for petitioner is present.</p> <p>This is an application u/s 5 of the Limitation Act for condoning the delay of 193 days in filing the application seeking probate of last WILL of Nepal Chandra Dey.</p> <p>It is pleaded in the petition that the father of the petitioner Nepal Chandra Dey during his life time executed his last WILL dated 03-03-2015 and the said WILL was registered before the Senior Sub-Registrar, Sonitpur, at Tezpur on 03-03-2015 being No. 12 of 2015. The testator Nepal Chandra Dey was identified before the Senior Sub-Registrar by his son-in-law Sri Tamal Kanti Dey and testator instructed Sri Tamal Kanti Dey to keep the said WILL under his custody and to produce after his death. The testator Nepal Chandra Dey expired on 25-02-2016 due to his old aged ailments. However, Sri Tamal Kanti Dey kept the last WILL of deceased Nepal Chandra Dey in his house and did not inform the petitioner about the existence of the said WILL and he forgot about it.</p> <p>It is further submitted that while clearing his almirah Sri Tamal Kanti Dey found the said registered WILL which was lying with him and on getting the WILL he informed the petitioner on 22-08-2019 and handed over the said WILL to the petitioner. Then, the petitioner consulted with</p>	

Advocate about the matter and the Advocate informed him that it is already barred by Limitation as per Article 137 of the Limitation Act. The application seeking probate of last WILL of Nepal Chandra Dey who expired on 25-02-2016 was beyond the prescribed period of three years. The petitioner prior to 22-08-2019 had no knowledge about the existence of last WILL of Nepal Chandra Dey and was prevented by sufficient cause for not filing the probate application with the period of limitation i.e. 24-02-2019. If the petitioner had knowledge about the existence of the WILL dated 03-03-2015 then the petitioner would have definitely filed the application for probate within the prescribed limit. Under the above facts and circumstances, petitioner has filed the instant case u/s 5 of the Limitation Act to condone the delay of 193 days for filing the application for probate of last WILL of Nepal Chandra Dey.

After filing the petition, notices were issued to the opposite interested parties. Accordingly, they appeared in court and filed affidavit stating that they have no objection if the delay of 193 days for filing application seeking probate of last WILL of Nepal Chandra Dey is condoned by this court.

I have heard the learned counsel appearing for the petitioner.

Having been satisfied with the authenticity of facts which shows that the delay in filing the probate petition is not because of any intentional laces on the part of the petitioner but because of the human frailty as the person in the custody with whom the WILL was preserved forgot about the execution of the WILL but subsequently having recovered the WILL and informing the petitioner some delay has been caused which are not intentional but natural one.

It is seen that from the date of death of the testator

	<p>on 25-02-2016 the probate petition ought to have filed within 24-02-2019 whereas the petition has been filed on 07-09-2019 because of the afore stated reasons and altogether 193 days of delay have been caused in presenting the petition. Hence the present petition u/s 5 of Limitation Act to condone the delay of 193 days.</p> <p>Since Section 5 of the Limitation Act is a procedural law which aids in receiving substantial justice but it should not come in the way of substantial justice. In the present case, when the other brother and sisters of the petitioner did not raised any objection rather expressed their solidarity in respect of the facts of the delay, this court finds no reason to refuse the application.</p> <p>As such, in the interest of doing substantive justice, petition is allowed and accordingly, the delay of 193 days is condoned.</p> <p>The case is accordingly disposed of.</p>	<p>(C.B.Gogoi) District Judge Sonitpur, Tezpur.</p>
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