

ORDER SHEET

DISTRICTS:- GOALPARA

IN THE COURT OF CIVIL JUDGE, GOALPARA

Misc (J) Case No. 01/2019 (in connection with Misc. (J) Case No. 20/2018 in T.A. No. 03/2018)

Versus

Serial No. of orders	Date	Order	Signature
	03/01/2019:	Seen the petition filed by petitioners/appellants under Order 9 Rule 7 r/w Sec. 151 of C.P.C. praying for restoration of Misc. (J) Case No. 20/2018 in connection with T.A. No. 03/2018 which was dismissed for default of the petitioners vide order dated 05/12/2018 . Heard. Perused the record of Misc. (J) Case No. 20/2018. It is stated in the aforesaid petition that the petitioners submitted notice to be served upon the O.Ps and also took step on 30/10/2018. Thereafter, the case was again fixed for step but the petitioner Maku Sheikh is an old ailing person suffering from eye disease and hence he could not contact his engaged advocate and could not submit notice to be served upon O.Ps in connection with Misc. (J) case No. 20/2018 for which the said Misc. case was dismissed for default on 05/12/2018. It is submitted that if the Misc. case is not restored, the petitioner will suffer irreparable loss. The record of Misc. (J) Case No. 20/2018 which arose out of petition filed u/s 5 of Limitation Act reveals that notice issued to O.P. No.2 returned with report stating that the said O.P. died four years back. Hence, this Court vide order dated 23/05/2018	

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directed the petitioners to take necessary step for substitution of legal heirs of O.P. No.2. But till 05/12/2018 the petitioners failed to submit appropriate petition for substitution of legal heirs of O.P. No.2. So, this Court vide order dated 05/12/2018 dismissed the case for default.

Record further reveals that there are two petitioners in the case. So, another petitioner namely Golap Hussain could have taken step in consultation with their engaged advocate. But in spite of giving several opportunity to take the step, the petitioners failed to take step. Be it also mentioned that the limitation period for substitution of legal heirs of deceased litigant is 90 days. So, even if the period of 90 days is counted from the date of order dated 23/05/2018, the limitation period of substitution is over prior to 05/12/2018.

From the above observation, I am constrained to hold that the ground assigned in the petition carries no merit to justify the petition and hence, I hold that the instant petition being devoid of merit is rejected.

With the above observation and order, the instant Misc. (J) Case stands disposed of.

Dictated