

GAHC010035812020



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

Case No. : I.A.(Crl.)/190/2020

SALEMA BIBI
D/O OSMAN ALI, R/O VILL-UPARTARI, BELTOLI CHARALI, BILASIPARA,
W/NO-9, P.O.-HAKAMA, P.S.-BILASIPARA, DIST-DHUBRI, ASSAM, PIN-
783348

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SHAIKUL ISLAM
S/O HAJJI KYAMOT ALI AHMED
R/O VILL-UPARTARI NEAR BELTOLI CHARALI
P.O.-HAKAMA
P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : PP, ASSAM

Linked Case :

SALEMA BIBI

VERSUS

THE STATE OF ASSAM AND ANR. (H)

Advocate for :

Advocate for : appearing for THE STATE OF ASSAM AND ANR. (H)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 10.05.2023

Heard Mr. M.A. Sheikh, learned counsel for the applicant. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State/respondent No. 1; Mr. A.K. Hussain, learned counsel for the respondent No. 2.

2. This is an application under Section 5 of the Limitation Act, 1963 praying for condonation of delay of 688 days for filing the connected Criminal Revision Petition against the impugned order dated 26.12.2017 passed by the SDJM(M), Bilasipara in Misc. Case No. 99/2016 under Section 125 Cr.P.C., whereby direction was given to the opposite party/respondent No. 2 to provide monthly maintenance of Rs. 1200/- for the petitioner and Rs.1,000/- for her minor child and also Rs. 12,000/- as compensation to the petitioner.

3. The petitioner, being the wife of the opposite party/respondent No. 2 filed a petition under Section 125 Cr.P.C. before the court of SDJM(M), Bilasipara claiming maintenance from her husband i.e. respondent No. 2 amounting to Rs.5,000/- for her and Rs.3,000/- for her minor daughter. Accordingly, a case was registered vide Misc. Case No. 99/2016. After hearing learned counsel for the petitioner, an ex-parte order dated 18.07.2016 was passed by the SDJM(M), Bilasipara allowing maintenance allowance @ Rs.3,001/- to the petitioner and

Rs.2,001/- for her minor daughter per month. Subsequently, the said order was challenged by the opposite party with a prayer to vacate the ex-parte order. After vacating the ex-parte order and after hearing both sides, the learned SDJM(M), Bilasipara delivered the judgment directed the respondent No.2/opposite party to provide maintenance of Rs.1200/- per month to the petitioner and Rs.1,000/- for her minor daughter and compensation of Rs.12,000/- to the petitioner.

4. Being aggrieved with the order as aforesaid, the petitioner has preferred the revision against the order of the learned SDJM(M), Bilasipara praying for enhancement of maintenance allowance. By that time, there was delay in 688 days. Hence, this petition for condonation of delay for filing the connected revision petition.

5. It is submitted by the learned counsel for the petitioner that the delay was explained in her petition that after passing of the impugned order dated 26.12.2017, the Misc. Case No. 99/2016 has been transferred to the Family Court, Dhubri from the court of SDJM(M), Bilasipara in the year 2018 due to inauguration of the Family Court in Dhubri district to relax the burden of matrimonial cases pending before the various courts within the Dhubri district. But subsequently, some cases including the petitioner's case have been returned back to the court of SDJM(M), Bilasipara from Family Court, Dhubri on demand of Bilasipara Bar Association and with the demand of public under the jurisdiction of SDJM(M), Bilasipara as a result of which the petitioner was unable to take proper steps for filing the revision petition in time.

6. Against the prayer of the petitioner, the learned counsel for the opposite party/respondent No. 2 has filed an objection stating that the applicant has not stated in a single paragraph showing specific ground for delay of 688 days and therefore, the petition is not maintainable and the same is liable to be dismissed.

7. It is further stated that this petition was filed in a very cryptic and casual manner without explaining the delay of 688 days as required by the law of limitation. There is no

specific statement in the present application with regard to when the applicant applied for the certified copy of the impugned order dated 26.12.2017 and when she got the same and as such, the delay of 688 days in filing the revision has no reasonable cause and the same is liable to be dismissed.

8. Against the said objection, the petitioner also filed an affidavit-in-reply, wherein it is stated that due to economical hardship, the petitioner was not in a position to approach before this Court in time as such, there was delay of 688 days in preferring the connected revision petition.

9. The learned counsel for the respondent No.2/opposite party submits that in order to seek condonation of delay, the petitioner has to show 'sufficient cause' which prevented her seeking legal remedy within time. However, the application is lacking in material particulars. There is no averments that the petitioner showed any such ground for condoning the delay in filing revision petition and prays for dismissal of condonation petition.

10. Needless to say, the petitioner filed a petition under Section 5 of the Limitation Act in order to seek condonation of delay. It is incumbent upon the petitioner to show that she was prevented by some sufficient cause which resulted in delay in filing the connected revision petition.

11. Section 5 of the Limitation Act provides thus –

“S. 5. Extension of prescribed period in certain cases- Any appeal or any application other than an application under any of the provision of order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he has sufficient cause for not preferring the appeal or making the application within such period.

Explanation– The fact that the appellant or the applicant was misled by any

order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

12. In the case of ***Inder Industries v. Gemco Electrical Industries***, reported in **147 (2008) DLT 305**, it was held as under-

“For the purpose of condonation of delay there must be some cause which can be termed as sufficient cause. Condonation of delay cannot be allowed only because the delay is unintentional and there are sufficient attending circumstance to bolster up the same. The crux of problem is as to whether there is some possible and reasonable explanation given by the appellant in his application for condonation of delay caused in preferring the appeal and that the impugned order is liable to be interfered with on the ground that it is perverse or patently erroneous. There should some extracting circumstances justifying the condonation of delay under Section 5 of the Limitation Act. There must be some compelling reason for the court to condone the delay.

The expression ‘sufficient cause’ cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat very purpose of Section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such sufficient cause stated in the application and as such, no interference in the impugned order is called for.”

13. The learned counsel for the respondent No. 2/opposite party has relied on a case law: ***P.K. Ramchandran vs. State of Kerala*** reported in **AIR 1998 SC 2276**, the Hon’ble Apex Court has observed as follows –

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour, when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was neither proper nor judicious. The order condoning the delay cannot

be sustained. This appeal therefore, succeeds and the impugned order is set aside. Consequently the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No cost."

14. In the case in hand, the application filed for condonation of delay hardly gives any reason or cause much less a reasonable explanation for condoning the delay. Merely because the case of the petitioner has been transferred from the court of SDJM(M), Bilasipara to Family Court, Dhubri after disposal of the case, which could hardly be a reason for condoning the delay of 688 days. The matter has been disposed of in the court of SDJM(M), Bilasipara in the year 2017. The petitioner got ample opportunity to prefer the connected revision petition after disposal of the case. No reason has been assigned by the petitioner in her petition what are the grounds behind for her failing to file the revision petition before this Court in time.

15. It is well settled that a party seeking the condonation of delay has to show sufficient cause warranting condonation of delay. The present is a case where there is nothing on record to show that since when the limitation start running because here the petitioner neither applied for certified copy of the judgment nor is it his case that he came to know on a particular date about passing of impugned judgment or the date when he received the information about the case on delivery of judgment. The explanation for condonation of delay as forthcoming is, therefore, neither plausible nor cogent and reliable nor constitute 'sufficient cause'. The grounds raised rather are absolutely vague, absurd, cryptic and evasive also. The present, therefore, is a case where the petitioner has miserably failed to show 'sufficient cause' warranting the condonation of delay as occurred in filing the connected revision petition.

16. Under such backdrop, as it appears that the delay of 688 days has not been properly explained by the petitioner, so prayer of the petitioner is rejected.

17. However, it appears from the record and the submission of the learned counsel for the

petitioner that the petitioner has preferred the connected revision petition for enhancement of maintenance allowance awarded by the trial court. Hence, the petitioner may approach before the trial court to take recourse to the provision of Section 127 Cr.P.C. for enhancement of maintenance.

18. In view of the above observation, the I/A stands disposed of.

JUDGE

Comparing Assistant