

GAHC010005492016



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

Case No. : Mat.App./19/2018

SRI PRABIN SAIKIA
SON OF LATE DINANATH SAIKIA
RESIDENT OF VILLAGE -NA -PAM ,MOUZA- NAKARI, P.S NORTH
LAKHMIPUR, DIST. LAKHIMPUR, ASSAM.

VERSUS

SMTI SULAKHYANA SAIKIA BHARALI
- D/O JOGEN BHARALI, R/O VILL. NA PAM, MOUZA NAKARI, P.S. NORTH
LAKHMIPUR, DIST. LAKHIMPUR, ASSAM.

Advocate for the Petitioner : MR. D BORAH

Advocate for the Respondent : MS. P BHATTACHARYA

Linked Case : I.A.(Civil)/2029/2023

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VERSUS

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Advocate for : MS. R B BORA
Advocate for : MS. R D MOZUMDAR appearing for XXXXXXXXX

Linked Case : MC/59/2023

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VERSUS

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Advocate for : MS. R B BORA
Advocate for : MS. R D MOZUMDAR appearing for XXXXXXXXX

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24.07.2024

- 1.** Heard Ms. R. B. Bora, learned Legal-aid-counsel for the applicant. Also heard Ms. R. D. Mozumdar, learned Legal-aid-counsel representing for the respondent/opposite party.
- 2.** The application under Section 5 of the Limitation Act, 1963 in I.A.(C) No. 2029/2023 has been filed by the applicant, namely, *Sulakhyana Saikia Bharali* praying for condonation of delay of 415 days in filing the application in MC No. 59/2023 for restoration of I.A.(C) No. 1719/2019 in Mat.Appeal No. 19/2018 which was dismissed for default on 09.02.2021 by this Court.
- 3.** The learned Legal-aid-counsel for the applicant has submitted that the Court of learned District Judge, Lakhimpur had passed decree of divorce in Title Suit No. 35/2013 directing the dissolution of marriage between the parties. While dissolving the marriage between the applicant and the respondent, it was

also directed that the respondent shall pay an amount of Rs.4,00,000/- as permanent alimony to the applicant in eight equal installments in an interval of three months.

4. Against the aforesaid judgment of decree passed by the learned District Judge, Lakhimpur, the applicant had preferred an appeal which was registered as Mat.Appeal No. 19/2018.

5. During the pendency of the said appeal, the matter was referred to the mediator and it was amicably settled and a deed of understanding was executed between the parties on 21.08.2018. In terms of the deed of the settlement this Court by order dated 21.08.2018 had disposed of Mat.Appeal No. 19/2018.

6. The learned Legal-aid-counsel for the applicant has submitted that after disposal of the Mat Appeal, the respondent had violated the terms and conditions of the memorandum of understanding dated 21.08.2018 which was agreed by both the parties.

7. The learned Legal-aid-counsel for the applicant has also submitted that there is a clause in the memorandum of understanding that in the event any violation by any of the parties of any of the conditions agreed upon by the parties, the Mat.Appeal No. 19/2018, may be revived.

8. Accordingly, the applicant had filed an interlocutory application which was registered as I.A.(C) No. 1719/2019 for reopening the Mat.Appeal No. 19/2018, however, the said application was dismissed on default on 09.02.2021 due to non-appearance of the counsel who was engaged by the applicant.

9. The learned Legal-aid-counsel for the petitioner has submitted that

earlier the engaged counsel had failed to appear in I.A.(C) No. 1719/2019 as he was suffering from Tuberculosis and liver ailment. The learned Legal-aid-counsel for the applicant has also submitted that there was no fault on the part of the present applicant as it was apparently fault of the engaged counsel who, under compelling circumstances, left to Lakhimpur and as the applicant is a poor lady, she could not pursue that case.

10. The learned Legal-aid-counsel for the applicant has submitted that as the applicant is unable to afford her own lawyer, she has been afforded with the assistance of the legal-aid-counsel in this case and considering the grounds shown by the applicant in her application for condonation of delay, the learned legal-aid-counsel for the applicant submits that delay of 415 days may be condoned.

11. On the other hand, learned Legal-aid-counsel for the respondent has opposed the application for condonation of delay filed by the applicant on the ground that the delay has not been properly explained by the applicant and no documents in support of the contention raised by the applicant has been submitted.

12. I have considered the submissions made by learned counsel for both the sides.

13. It appears that considerable amount of delay has been made in filing the restoration application (MC No. 59/2023) for restoration of I.A.(C) No. 1719/2019. However, it appears that both the appellant as well as the opposite parties are being defended by the legal-aid-counsel appointed by this Court and thus the fact that they are unable to afford their own counsel is undisputed.

14. It also appears that though no document to show the ailment of the counsel who was earlier engaged by the applicant has been annexed along with her application, however, it is also to be noted that being herself a poor lady, who has been afforded assistance of legal-aid-counsel, it would be very cumbersome for the appellant to collect the medical documents of her earlier engaged counsel who have himself remain absent in I.A.(C) No. 1719/2019 without informing the applicant.

15. Moreover, considering the fact that the Mat.Appeal No. 19/2018 was earlier disposed of on the basis of an amicable settlement reached between the parties, hence, the possibility of resolving the present dispute also through an amicable settlement between the parties may not be ruled out.

16. In view of the above and for the aforesaid reasons, this Court is inclined to take a lenient and justice oriented view of the matter to condone the delay of 415 days in preferring the connected interlocutory application. Moreover, for reasons mentioned in application in MC No. 59/2023, the said application is also allowed.

17. Accordingly, the applications in I.A.(C) No. 2029/2023 and MC No. 59/2023 are hereby allowed and I.A.(C) No. 1719/2019 is restored to file.

18. The Registry to restore the I.A.(C) No. 1719/2019 and list it along with MAT Appeal No. 19/2018 in the next week on a date to be fixed by the Registry.

JUDGE

Comparing Assistant