

GAHC010111282023



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

I.A.(Civil)/1642/2023 In
Mat. App./5892/2023 (filing number)

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W/O SRI SHANKU DAS, D/O LATE MANIK CHANDRA DAS, RESIDENT OF
VILLAGE HATIRPATH, PO BHAGATPUR, PS SILCHAR, DIST CACHAR,
ASSAM 788005

VERSUS

XXXX XXXX

S/O SRI SHYAM LAL, PERMANENT RESIDENT OF VILLAGE PUB
BARUALA, PO BARUALA BAZAR, PS RRATABI, DIST KARIMGANJ, ASSAM,
788734 PRESENTLY RESIDENT OF MAIN ROAD, NEAR RAMKRISHNA
MISSION, PO, PS AND DIST KARIMGANJ, ASSAM 788710

Advocate for the Petitioner : MR. A M S MAZUMDER

Advocate for the Respondent : MR. M A CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

19.06.2024.

Heard Shri AMS Mazumder, learned counsel for the applicant. Also heard
Shri HK Baruah, learned counsel for the sole opposite party.

The instant application has been filed under Section 5 of the Limitation Act,

1963 for condonation of delay of 104 days in preferring the connected matrimonial appeal.

The connected matrimonial appeal has been preferred against an *ex parte* judgment and decree dated 03.11.2022 passed by the learned District Judge, Karimganj in Title Suit (Divorce) No. 131/2021.

It is submitted by the learned counsel for the applicant that summons were not served upon her as a result of which, the applicant was not aware of the proceeding and therefore, could not contest the same. It is also submitted that she could learn about the judgment at a later point of time and therefore, had preferred the aforesaid appeal and in the process, a delay of 104 days has occurred. It is submitted that there were sufficient reasons which had prevented the applicant from preferring the appeal within the time prescribed by limitation and accordingly, the present application be allowed.

Per contra, Shri Baruah, learned counsel for the opposite party has submitted that the projection of non-receipt of summons is not factually correct and is belied by the report of the *Jarikarok* as per which, the summons were refused to be accepted by the applicant. The learned counsel has also submitted that after expiry of the period of limitation, the opposite party has remarried.

The rival submissions have been duly considered.

An adjudication in an application filed for condonation of delay is to be done by having a justice oriented approach and in a pragmatic manner. In the instant case, the decree of divorce is sought to be challenged by way of an appeal and the reason cited is lack of knowledge about the proceeding before the learned District Judge. It is not in dispute that the aforesaid judgment dated 03.11.2022 is an *ex parte* one.

Though there may be certain issues as to whether summons were actually served upon the applicant, this Court is of the view that without even going to the said issue, the applicant should not be precluded from an opportunity to challenge the impugned judgment on merits for which, the connected appeal has been preferred.

Considering the above, the delay of 104 days in preferring the connected appeal is condoned and the instant interlocutory application is allowed.

The interlocutory application accordingly stands disposed of.

JUDGE

Comparing Assistant