

GAHC010036752024



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

Case No. : I.A.(Civil)/752/2024

MADHUSMITA BARUAH SHARMA
W/O SANJEEV SHARMA
C/O ARINDAM NAUKAKHI, SANTOOR APARTMENT, JAYANAGAR, SIX
MILE, OPP. NRL PETROL PUMP, FLAT NO. 207, GUWAHATI ASSAM, PO
DISPUR , PS BASISTHA, DIST KAMRUP M ASSAM 781028
PRESENTLY RESIDING AT DESOIKASH SONARI, JAIL ROAD, NEAR
JAGANNATH BARUAH HIGH SCHOOL, PO KOROKATALI, 785012, DIST
JORHAT, ASSAM

VERSUS

SANJEEV SHARMA
S/O LATE LOKESWAR SHARMA
RESIDENT OF BIJOY NAGAR (OUGURI) PO RUPAI SIDING, PS
DOOMDOOMA, DIST TINSUKIA, ASSAM 786153

Advocate for the Petitioner : MR. P BHOWMICK

Advocate for the Respondent : MR S BORTHAKUR

Linked Case :

MADHUSMITA BARUAH SHARMA

VERSUS

SANJEEV SHARMA E

Advocate for : MR. P BHOWMICK
Advocate for : appearing for SANJEEV SHARMA E

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 23.07.2024

- 1.** Heard Mr. P. Bhowmick, learned counsel for the applicant. Also heard Mr. R. Sensua, learned counsel for the opposite party.
- 2.** This application under Section 5 of the Limitation Act, 1963 has been filed by the applicant for condoning the delay of 250 days in preferring the connected First Appeal against Order (FAO) challenging the order dated 09.03.2023, passed by the Court of learned Additional District Judge No. 2 (FTC), Tinsukia, in Misc. J Case No. 5/2022.
- 3.** Learned counsel for the applicant has submitted that the opposite party herein, had filed a Title Suit, seeking a decree of divorce before the Court of learned Additional District Judge No. 2 (FTC), Tinsukia, which was registered as Title Suit (M) No. 112/2019, the said suit was, decreed ex-parte against the present applicant on 16.03.2022.
- 4.** Learned counsel for the applicant has submitted that when the petitioner came to know about the said ex-parte decree, she preferred an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908, for setting aside the ex-parte decree, which was registered as Misc. J Case No. 5/2022.
- 5.** Learned counsel for the applicant has submitted that by order dated 09.03.2023, the said Misc. J Case was dismissed by the Trial Court, for non-prosecution, as the applicant failed to file Vakalatnama in the said case, authorizing his engaged counsel in the said case.

6. Learned counsel for the applicant submits that challenging the said order dated 09.03.2023, passed in Misc. J Case No. 5/2022, the applicant has preferred the connected FAO, however, owing to liver ailment of the applicant, there has been a delay of 250 days in preferring the connected FAO, and therefore, the instant Interlocutory Application has been filed for condoning the said delay.

7. Learned counsel for the applicant has submitted that the petitioner has been suffering from liver ailment since the year 2017 which ultimately, led to her liver transplant, at the Apollo Hospital, Chennai, on 09.05.2023.

8. It is also submitted by the learned counsel for the applicant that after the operation the applicant is still undergoing post operation stage and has to undergo medical treatment from time to time, which has also added to delay on her part in preferring the connected FAO against the impugned order dated 09.03.2023.

9. Learned counsel for the applicant has also submitted that the cause shown by the applicant for delaying in preferring the connected FAO was beyond her control and the same may be regarded as sufficient cause, which prevented her to file the connected FAO within the period of limitation and hence, the learned counsel for the applicant has prayed for condoning the delay in preferring the connected FAO .

10. On the other hand, Mr. R. Sensua, learned counsel for the opposite party has raised a preliminary objection to the effect that in the connected FAO, which has been filed by the applicant, the applicant has challenged not only the order dated 09.03.2023, passed in Misc. J Case No. 5/2022, but also the judgment and decree dated 16.03.2022 passed in Title Suit (M) No. 112/2019.

11. Mr. R. Sensua, learned counsel for the opposite party submits that the

judgment and decree passed in Title Suit (M) No. 112/2019 cannot be challenged under an appeal preferred by the applicant under Order 43 Rule 1(d) of the Code of Civil Procedure, 1908, but for that he has to file a regular first appeal, which has not been done by the applicant in this case.

12. Learned counsel for the opposite party has also submitted that though the applicant has taken the plea of undergoing liver transplantation which was conducted on 09.05.2023, the applicant had sufficient time to file the FAO after the said date as the limitation for filing FAO extended till the month of June 2023.

13. Learned counsel for the opposite party has also submitted that the applicant has failed to justify the entire period of delay, which is required for condoning any delay under Section 5 of the Limitation Act, 1963 and hence, he has vehemently opposed the prayer for condoning the delay in preferring the connected FAO by the applicant.

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

15. It is pertinent to mention herein that while making submissions, learned counsel for the applicant has also submitted that though in the prayer portion of the connected FAO, the applicant has also prayed for setting aside the judgment and decree dated 16.03.2022 passed in Title Suit (M) No. 112/2019. However, he will not be pressing for the same and the FAO would be limited only against the order dated 09.3.2023 passed in Misc. J Case No. 5/2022.

16. The medical documents submitted by the applicant shows that the applicant was suffering from liver ailment and ultimately, undergone a liver transplantation on 09.5.2023.

17. It also appears that the applicant is also undergoing post-operative

treatment after the said date. Though, the learned counsel for the opposite party has submitted that the applicant could have preferred the connected FAO within the period of limitation as she was operated only on 09.5.2023 and the period of limitation for filing the connected FAO extended till the month of June' 2023, however, considering the nature of ailment suffered by the applicant during the relevant period, this Court is of considered opinion that a liberal and justice oriented approach has to be taken while considering the application for condonation of delay. More so, when the order which is under challenge in the connected FAO also appears to be an order where the applicant was not properly represented for whatsoever reasons.

18. Considering the above facts, this Court is of opinion that the reasons shown by the applicant in this Interlocutory Application may be regarded as sufficient reasons which prevented her to prefer the connected FAO within the period of limitation of 90 days prescribed by the statute.

19. In view of above, the delay of 250 days caused by the applicant in preferring the connected FAO is hereby condoned and this application under Section 5 of the Limitation Act, 1963 is allowed.

20. Let the connected FAO be registered by the Registry and list the same for Admission after a week on a date to be fixed by the Registry.

JUDGE

Comparing Assistant