

GAHC010156962024



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

Case No. : I.A.(Civil)/2463/2024

REFILL STAR PAKYNTEIN
S/O. D. EARLY PEACE, R/O. MAWLAI, MUDATBAKI, P.O. PHUDMURI, DIST.
EAST KHASI HILLS, MEGHALAYA.

VERSUS

JAYA ARORA
D/O. DARSHAN LAL ARORA, R/O. KKB ROAD, CHENIKUTHI, H/O NO. 51,
P.S. CHANDMARI, GHY-781003, DIST. KAMRUP (METRO), ASSAM.

Advocate for the Petitioner : MS. P CHAKRABORTY, MS. A DAS

Advocate for the Respondent : MS P TALUKDAR,

Linked Case :

XXXXXXXX

VERSUS

XXXXXX

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE KAKHETO SEMA

Advocate for the applicant : Ms. P. Chakraborty

Advocate for the respondent : Ms. P. Talukdar.

Date of hearing : 22.01.2025

Date of judgment : 30.01.2025

JUDGMENT & ORDER

(S.K. Medhi, J.)

The instant application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 21 days in filing the connected appeal against the judgment dated 12.06.2024 and order dated 14.06.2024 passed in F.C.(Civil) No. 427/2011 by the learned Principal Judge, Family Court -2, Kamrup (Metro).

2. We have heard Ms. P. Chakraborty, learned counsel for the applicant. We have also heard Ms. P. Talukdar, learned counsel for the respondent.

3. Ms. Chakraborty, the learned counsel for the applicant has submitted that

the delay in the instant case is only 21 days and the reasons for the same have been adequately pleaded in the application, more specifically paragraphs 13, 14 and 15 thereof. It is submitted that the instant appeal has been preferred *qua* a judgment passed by the learned Family Court in a suit filed by the applicant for annulment of the marriage. It is submitted that though the impugned judgment was passed on 14.06.2024 and the certified copy was applied for on 15.06.2024, due to the fact that the applicant is ordinarily residing in the State of Meghalaya, he could not come to collect the certified copy prior to 18.07.2024. She has submitted that in matters pertaining to the Family Court, the parties are required to present in person for collecting certified copies. She has also clarified that the pleadings in paragraph 14 of the application are not properly worded and the actual meaning is that the certified copy could be collected on 18.07.2024.

4. By relying upon the judgment of the Hon'ble Supreme Court in the case of ***Sridevi Datla vs. Union of India and Ors.*** reported in ***(2021) 5 SCC 321***, the learned counsel for the applicant has submitted that there is a distinction of cases where the delay is not inordinate and cases where the delay is of few days and accordingly, the approach of the Court should be slightly different. She accordingly submits that the delay be condoned and the application be allowed.

5. *Per contra*, Ms. Talukdar, the learned counsel for the respondent has submitted that the application suffers from suppression of material facts. It is submitted that while the certified copy was applied on 15.06.2024 and the same date was notified for requisite stamps and folios, the same was deposited only on 18.07.2024 and thereby the negligence of the applicant becomes apparent. She has submitted that the judgment being of 12.06.2024, it is from that date from which limitation would start. She submits that in paragraph 14 of the

application, misleading statements have been made.

6. The learned counsel for the opposite party has submitted that the delay is required to be explained not from the date of expiry of limitation but from the date when the limitation starts and in this connection, she has relied upon the case of ***State of Madhya Pradesh vs. Ram Kumar Choudhury*** reported in ***2024 INSC 932***. In the said case, the Hon'ble Supreme Court had dismissed the SLP filed by the State against an order whereby delay was refused to be condoned.

7. She has also relied upon the case of ***Balwant Singh vs. Jagadish Singh*** reported in ***(2010) 8 SCC 685*** wherein the aspect of a party approaching the Court without clean hands has been highlighted. In the said case it was held that no sufficient causes could be shown. Reliance has also been made to the case of ***All India EPF Staffs Federation vs. Union of India [SLP (C) No. 13330/ 2024]*** Judgment dated 25.06.2024] to contend that suppression of materials facts has to be dealt with harshly. She has also relied upon the case of ***H. Guruswamy and Ors. A. Krishnaiah*** reported in ***2025 INSC 53*** to contend that while considering a delay condonation application, the merit of the main case is not required to be based upon. Reliance has also been placed upon the case of ***Pathapati Subba Reddy vs. the Special Deputy Collector*** reported in ***2024 INSC 286*** wherein a similar view has been taken and the following has been laid down.

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of

for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

8. The learned counsel for the respondent accordingly submits that no sufficient cause has been cited and there being suppression of material facts, the instant petition is required to be dismissed.

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

10. It is a settled position of law that a pragmatic and justice oriented approach is required in adjudication of such an application for condonation of delay. In the case of ***Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and Ors.*** reported in ***(2013) 12 SCC 649***,

the Hon'ble Supreme Court has laid down certain principles to be followed in deciding a delay condonation application which are extracted herein below:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the

first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

11. The Hon'ble Supreme Court in the landmark case of **Collector, Land Acquisition, Anantnag v. Katiji** reported in **(1987) 2 SCC 107** has laid down that there is no strict requirement of explaining each day's delay.

12. On a reading of the case laws governing the field, the following principles (not exhaustive) can be taken as guidelines for deciding a petition for condonation of delay –

- i. The power vested upon a Court to exercise such jurisdiction is essentially a discretionary one. The natural corollary is that there has to be an application of a judicious mind by taking into consideration all the relevant

factors.

ii. The relevant factors which are required to be taken into consideration would include the conduct of the party as discretion can be exercised only by balancing the equities.

iii. The length / duration of delay and the explanation put forward are both relevant considerations for exercise of such discretion.

iv. The Court would generally proceed with a liberal, pragmatic and justice-oriented approach with such petition as substantial justice should not be allowed to be defeated by mere technicalities.

v. At the same time, the Court would also not lose sight of the fact that a valuable right has accrued on the other party and such right should not be interfered with lightly. Therefore, though there may not be a requirement to seek a day-to-day explanation, the explanation for the delay should be a reasonable one which is acceptable to a man of ordinary prudence.

13. In the instant case, the delay is of 21 days which, in the comprehension of this Court cannot be termed to be an inordinate one. So far as the reasons cited to explain the said delay, it appears that there is some inconsistencies in the pleadings of the application regarding the date when the certified copy of the impugned judgment was made available. The learned counsel for the applicant has explained the position that the pleadings in paragraph 14 are not properly worded and it is not in dispute that the certified copy was received on 18.07.2024, as would reveal from the certified copy itself which is annexed to the memo of appeal.

14. There is an allegation by the opposite party of suppression of material

facts *qua* the aspect of the date of obtaining the certified copy of the impugned judgment. The aspect of suppression of material facts is required to be examined from the point of view as to whether by such suppression, the party would try to get undue advantage. It is also noted that *dehors* the aspect of the inconsistency of the date of receipt of the certified copy, the delay in preferring the appeal is only 21 days.

15. So far as the case laws relied upon by the opposite party, it is noted that in the case of **Ramkumar Choudhury** (supra), the delay was seen to be grossly inordinate of 5 years 10 months 16 days. Similarly, in the case of **Balwant Singh** (supra), the delay was of 778 days and in the case of **H. Guruswamy** (supra) the delay was of 2200 days. So far as the case of **Pathapati Subba Reddy** (supra) is concerned, the aspect of having a justice oriented approach has been reiterated by the Hon'ble Supreme Court.

16. There is another aspect of the matter which is required to be taken into consideration. Before the enactment of the Family Courts Act, 1984 (herein after F.C. Act), an appeal against a decree passed by the District Judge under the Hindu Marriage Act, 1955 (herein after H.M. Act) would have to be filed under Section 28 of the said Act. The period of limitation prescribed for such appeal was 30 days. The aforesaid issue was the subject matter in the case of **Savitry Pandey v. Prem Chandra Pandey** reported in **AIR 2002 SC 591** before the Hon'ble Supreme Court. The Apex Court, after noticing the inadequate period of limitation prescribed under the H.M. Act as litigants from far flung districts would suffer prejudice while approaching the High Court which the appellate forum had made the following observations which are extracted herein below:

"18. At this stage we would like to observe that the period of limitation prescribed for filing the appeal under Section 28(4) is

apparently inadequate which facilitates the frustration of the marriages by the unscrupulous litigant spouses. In a vast country like ours, the powers under the Act are generally exercisable by the District Court and the first appeal has to be filed in the High Court. The distance, the geographical conditions, the financial position of the parties and the time required for filing a regular appeal, if kept in mind, would certainly show that the period of 30 days prescribed for filing the appeal is insufficient and inadequate. In the absence of appeal, the other party can solemnise the marriage and attempt to frustrate the appeal right of the other side as appears to have been done in the instant case. We are of the opinion that a minimum period of 90 days may be prescribed for filing the appeal against any judgment and decree under the Act and any marriage solemnised during the aforesaid period be deemed to be void. Appropriate legislation is required to be made in this regard. We direct the Registry that the copy of this judgment may be forwarded to the Ministry of Law & Justice for such action as it may deem fit to take in this behalf."

17. It may be noted that pursuant to the said judgment of **Savitri Pandey** (supra), Section 28(4) of the H.M. Act was amended in the year 2003 and period of limitation was extended from 30 to 90 days.

18. As mentioned above, after enactment of the F.C. Act, the provision to prefer appeal has been given in Section 19 and as per sub-section (3), the period of limitation has been prescribed as 30 days. It is obvious that while making the said enactment, a consistency was maintained with the aspect of limitation *vis-a-vis* Section 28 of the H.M. Act (before the amendment). However, as noted above, pursuant to the judgment of **Savitri Pandey** (supra) which was in the context of the H.M. Act, while the period of limitation has been amended from 30 to 90 days, a corresponding amendment in Section 19 (3) of the F.C. Act has not been carried out.

19. So far as the State of Assam is concerned, Family Courts are not available

in all the districts and it is only in those districts where Family Courts are available that matrimonial disputes are adjudicated under the F.C. Act. On the other hand, in the districts where Family Court is not available, the Court of the District Judge adjudicates matrimonial disputes under the H.M. Act. The litigants, as such, are not left with any option to choose the forum and it depends as to where the cause of action would arise. That being the position, it would be prejudicial to a litigant in the aspect of preferring an appeal from a judgment passed by the Family Court vis-à-vis a litigant preferring an appeal from a judgment passed by a District Judge on the point of limitation. Therefore, in the context of the direction of the Hon'ble Supreme Court in the case of **Savitri Pandey** (supra), wherein the aspect of the litigants coming from far flung districts to the High Court to prefer an appeal has been taken into consideration, it is desirable that a uniform period of limitation be prescribed.

20. The Hon'ble Supreme Court in the case of **K.A. Abdul Jaleel vs. T.A. Sahida** reported in **AIR 1997 Ker 269** has clarified that the F.C. Act aims to provide a unified forum for resolving family disputes effectively without undermining personal laws like the H.M. Act.

21. The aforesaid issue had also arisen before a Full Bench of the Bombay High Court in the case of **Shivram Dodanna Shetty Vs. Sharmila Shivram Shetty** reported in **2017(1) Mh.LJ** (Judgment dated 01.12.2016). The following observations would be relevant.

(13.) The provisions of Section 28(4) of the Act of 1955 came to be amended consequent to the suggestion given by the Apex Court in Savitri Pandey's case (Supra). In its letter and spirit, the views of the Apex Court in the case of Savitri Pandey are required to be considered. The Apex Court observed that period of limitation prescribed for filing appeal under Section 28(4) was apparently

inadequate which facilitates frustration of the marriages by unscrupulous litigant spouses. It is necessary to refer to the observations of the Apex Court in para 18 of the said judgment here itself:-

"18."

(14.) Consequent to the observations and suggestions given by the Apex Court, quoted above, the Parliament amended the provisions of Section 28(4) of the Act of 1955. Therefore, the purpose and object behind amending the said Act in the year 2003 is required to be considered. While amending the provisions, the Parliament was aware of the existence of the Act of 1984. It is presumed that the Parliament was conscious of the existence of another statute relating to the subject, prescribing forum and procedure and period of limitation. Therefore, a harmonious interpretation which would advance the object and purpose of the legislation will have to be adopted.

(15.) As the Act of 1955 was amended by the Parliament in the year 2003, in that sense, the period of limitation of ninety days was prescribed by a later law which would override the provisions relating to period of limitation prescribed in the earlier enactment i.e. Act of 1984. The substantive provision of law was amended at a later stage and the same shall prevail being later in point of time.

(16.) Even if both the Acts are considered on certain subjects and situations to be special and general, even then, as a matter of sound interpretation and keeping in view the purpose for providing a larger period of limitation, it must be construed that the appeals arising out of the judgment and orders passed by the Family Court shall be governed by a larger period of limitation prescribed under Section 28(4) of the Act of 1955. Any contrary interpretation would frustrate the very object of the enactment which was made on the suggestion of the Apex Court in the case of Savitri Pandey.

(24.) While interpreting the provisions of the said two enactments, it needs to be considered that we are a country of vast population, millions of people face financial hardship for litigating a matter,

people have to spend considerable amount of time, money and energy. The geographical conditions further make easy access to justice difficult and taking into consideration all these circumstances, coupled with the peculiar situation faced by the parties while litigating matrimonial, family related issues, the Apex Court made certain observations in the case of Savitri Pandey which suggestion was accepted by the Parliament and accordingly the law was amended.

(28.) We are of the view that considering the scheme of both the enactments and the purpose behind amending the provisions of Section 28 (4) of the Act of 1955, it would not be appropriate to apply different period of limitation, one in case of orders passed by the Family Courts and in another by the regular Civil Courts. Such an approach would frustrate very purpose of legislation.

(29.) For the reasons stated above, we hold that for an appeal filed under sub-section (1) of Section 19 of the Family Courts Act, 1984, period of limitation prescribed under sub-section (4) of Section 28 of the Hindu Marriage Act, 1955 shall apply.

22. We have noted that the Full Bench of the Bombay High Court in the aforesaid judgment of **Shivram Dodanna Shetty** (supra) has also relied upon a Division Bench of the said Court in the case of **Sonia Kunwar Singh Bedi v. Kunwar Singh Bedi**, reported in **2015 (1) Mh.L.J. 954** wherein the aspect of equality under the law has also been taken into consideration. It has been laid down that on the principle of equality under Article 14 of the Constitution of India also, an identical period of limitation is required to be made applicable against all orders appealable under section 28 of the H.M. Act vis-à-vis an order appealable under Section 19 of the F.C. Act. It has been held that merely because the order is passed by a District Court, a larger period of limitation i.e. 90 days and merely because the order is passed by the Family Court, a lesser period of limitation of 30 days would be unreasonable and will not stand the test

of equality.

23. By following the Full Bench decision of the Bombay High Court, a Division Bench of the Gujarat High Court in the case of ***Chaudhary Chetnaben Dilipbhai vs. Chaduhary Dilipbhai Lavjibhai*** (judgment dated 17.01.2023) reported in ***2023(1) Civil Court Cases 562*** has reiterated that the time limit for filing an appeal challenging a judgment or order of Family Court arising out of a matrimonial dispute is 90 days.

24. In view of the aforesaid conspectus and also by referring to the views expressed by the Full Bench of the Hon'ble Bombay High Court as mentioned above, we are of the considered opinion that the delay of 21 days which has been calculated by counting the same with a period of limitation as 30 days may not even come into the way of preferring the appeal in the form of "barred by limitation". In any case, we are of the view that the delay, not being inordinate and there is an explanation provided which is acceptable, the same is required to be condoned which we accordingly do.

25. The application accordingly stands allowed.

26. The appeal is accordingly directed to be registered and be listed for admission.

JUDGE

JUDGE

Comparing Assistant