

Heard Mr. P Katakai, learned counsel for the petitioner and Mr. G Saikia, learned counsel for the sole opposite party.

2. This is an application under section 5 of the Limitation Act praying for condoning delay of 765 days in filing second appeal challenging the judgment and decree dated 16.07.2010 passed by the learned Civil Judge No. 3, Kamrup at Guwahati in Title Appeal No. 37/2009. The petitioner stated in paragraph 4 of the application that she came to know about the disposal of the Title Appeal No. 37/2009 in the first part of April, 2012 and thereafter applied for certified copy of judgment and order on 05.04.2012. She received the same on 25.04.2012 and then applied for legal aid before the Gauhati High Court Legal Services Committee on 27.04.2012. Averments made in paragraph 4 of the application are quoted below:-

4. That the applicant came to know about the disposal of the Title Appeal No. 37/2009 in the first part of April, 2012. She applied for the certified copy of Judgment and Order on 05.04.2012 and she received the same on 25.04.2012. After receiving the certified copy of the Judgment and Order dated 16.07.2010, the applicant applied for legal aid before the Gauhati High Court Legal Services Committee on 27.04.2012. After scrutinising her application and the relevant documents, Gauhati High Court Legal Services Committee approved her application and decided to provide her legal aid.

3. On being summoned, the sole opposite party appeared and submitted written statement. In paragraph 7 of the affidavit in opposition, the sole opposite party stated that immediately after getting the decree in T.A. No. 37/2009, the husband/ opposite party filed a petition under section 127 of the Code of Criminal Procedure for cancellation of monthly maintenance of the petitioner which she was receiving in maintenance case No. 20M/2007 of the court of learned Judicial Magistrate, 1st Class, Rangia. Thereupon the learned court passed order on 27.05.2011 cancelling maintenance order in respect of the wife. Mr. G Saikia, learned counsel for the sole opposite party, however, submits that the learned Magistrate maintained the earlier order of maintenance insofar as the child is concerned but cancelled the maintenance order insofar as it relates to the petitioner who is not legally married wife of the opposite party. Under such circumstances, it is clear that the present petitioner was aware about the passing of judgment in the month of May, 2011 itself and not in the month of April, 2011 as stated by her.

4. Averments made in paragraph 7 of the affidavit in opposition are quoted below:-

7. That with regard to the averments made by the petitioner in para 4 of the said petition to the extent that she came to know about the disposal of Title Appeal No. 37/2009 in the first part of April, 2012 and thereafter she obtained certified copy of the same on 25.04.2012 and applied for legal aid is nothing but blatant lie, and therefore this deponent denies the same as false, fictitious, concocted and made with malafide intention for achieving illegal gain.

The answering deponent begs to state that after getting the decree in T.A. No. 37/2009 your deponent filed a petition under section 127 Cr.P.C. for cancellation of monthly maintenance of petitioner which she was receiving in maintenance case No. 20M/2007, pending before the Judicial Magistrate 1st Class Rangia, Kamrup.

And on filing of such petition the learned Magistrate was finally pleased to cancel the maintenance of the petitioner vide order dated 27.05.2011 passed in Case No. 30M/2007. The following lines from the said order dated 27.05.2011 passed in Case No. 30M/2007 is of great significance in exposing the conduct of the petitioner as well as her lies.

The learned counsel appearing for the first party (i.e. the petitioner) has made submission that as per sec 18 of the Hindu Law the civil court has no jurisdiction to entertain matrimonial matters except the District Court including the Principal Judge of family court. More so, sec. 8 of Family Courts Act excluded juri

sdition of Dist. Court and its subordinate Civil Court in matter relating to section 7(i)(a) to (g). Therefore the judgment passed by the Civil Judge Sr. Div. 3 in T. Appeal 37/2007 has no relevancy to interfere with the relief, which was already granted in favour of the first party i.e. the present petitioner. And on such cancellation of her monthly maintenance, the petitioner, in the month of May, 2011, applied for certified copy of the aforesaid order dated 27.05.2011 and challenged the same by preferring criminal revision in the court of Additional Sessions Judge, Rangia being Crl. Rev. No. 45/11 in the month of August, 2011. So, the aforesaid finding of the trial court in case No. 30M/2007 and the statements made by the present petitioner in para 5 of her petition filed in Crl. Rev. No. 45/2011 makes it abundantly clear that she had the knowledge about the judgment and decree passed in T.A. No. 37/2010 since the month of May, 2011 if not earlier and not in the month of April, 2012 as alleged by her. Thus the petitioner must be held accountable for making such false and concocted statements on affidavit before this Hon'ble Court. The rest of the averments made in the said para are beyond the purview of this deponent's knowledge and hence this deponent has nothing to comment on the same.

5. After receipt of this affidavit in opposition, petitioner submitted affidavit in reply on 03.12.2015 admitting the averments made in paragraph 7 of the affidavit in opposition and admitted that she was not aware about the statement made in paragraph 4 of the application and merely signed the same. She admitted to have come to know about the impugned judgment and decree way back in the month of May, 2011. Having made such admission, the petitioner has not furnished any explanation for long one year as to why any step for preferring the second appeal was not taken during long one year. Thus the delay for period from May, 2011 to April, 2012 remains unexplained.

6. It appears that the present petitioner instituted case No. 20M/2007 in the court of learned Judicial Magistrate 1st Class, Rangia praying for maintenance for her and her minor son. The learned Magistrate granted maintenance in favour of both. In the mean time, the present opposite party instituted a suit being Title Suit No. 19/2008 in the court of learned Munsiff No. 4 at Guwahati for declaration that the present petitioner is not his legally married wife. The suit was dismissed on contest on 02.03.2009. Thereafter the husband preferred Title Appeal No. 37/2009 in the court of learned Civil Judge No. 3, Kamrup at Guwahati. The appeal was partly allowed on contest by judgment and decree dated 16.07.2010. The first appellate court held that the present petitioner was not a legally married wife of the opposite party herein, however, the child was entitled to maintenance from the present opposite party. After passing of the judgment in T.A. No. 37/2009, the husband/ opposite party filed application before the learned Judicial Magistrate 1st Class, Rangia under section 127 of the Code of Criminal Procedure praying for modification of the maintenance order and the same was eventually allowed. This was done way back in 2011 and for long one year, the petitioner herein did not take any step for preferring appeal against the impugned appellate judgment and decree dated 16.07.2010. No explanation whatsoever has been given as to why no appeal has been preferred within this one year. Moreover, the averments made in paragraph 4 of the application filed under section 5 of the Limitation Act, 1963 have been shown to be incorrect and the petitioner has also accepted the same by filing affidavit in reply. On the basis of such averments made by both sides, it is clear that the petitioner has not furnished any explanation whatsoever as to why appeal was not preferred within the period of May, 2011 to April, 2012. Mr. P Kataki, learned counsel for the petitioner, submits that initially the application was submitted by legal aid counsel. But since the learned legal aid counsel was not showing interest in the case, under such circumstances, petitioner became constrained to engage a private counsel and this is how the matter has been listed today.

7. Be that as it may, having heard the learned counsel for the parties and having noticed the averments made in paragraph 4 of the petition and paragraph 7 of the affidavit in opposition as well as paragraph 7 of the affidavit in reply, this court is of the opinion that the petitioner has failed to furnish suffi-

ent cause within the meaning of Order XLI Rule 3A and/or section 5 of the Limitation Act, 1963. Accordingly, application for condonation stands rejected.

8. No order as to costs.