

IN THE HIGH COURT OF SIKKIM : GANGTOK
CIVIL APPELLATE JURISDICTION

IA NO. 01/2025

IN

MAT. APP. NO. 96/2025 (Filing No.)

Ms. Yangchen Donkar Bhutia,
Wife of Sonam Pintso Bhutia,
Resident of below Sonam Hotel, Lal Market,
P.O. and P.S. Gangtok, Sikkim.
Presently residing at Rongyek, Bhusuk Road,
Near Panchayat House, Gangtok,
Sikkim.

Applicant/Appellant

Versus

Mr. Sonam Pintso Bhutia,
Son of Late Lhakpa Thenup Bhutia,
Resident of below Sonam Hotel, Lal Market,
P.O. and P.S. Gangtok, Sikkim.
Pin Code – 737101

Respondents

For Applicant/Appellant : Mr. Pramit Chhetri, Advocate.

For Respondent : Ms. Zola Megi, Advocate.

Date: 23/09/2025

CORAM:

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

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J U D G E M E N T: (per the Hon'ble, the Chief Justice)

This is an application under section 5 of the Limitation Act, 1963, for the purpose of seeking condonation of delay for filing of an appeal under section 19(1) of the Family Courts Act, 1984. The judgment and order of the learned Family Court was passed in respect of Family Court (Crl.) Case No.36 of 2024, in an application under section 144 of the Bharatiya Nagarik

Suraksha Sanhita, 2023, (Mrs. Yangchen Donkar Bhutia vs. Mr. Sonam Pintso Bhutia), on 05th March, 2025. The period of delay in filing of the present appeal, as stated in the instant application, is 135 (one hundred and thirty five) days.

2. The question that was posed by this Court is whether the period of 135 (one hundred and thirty five) days can be condoned by this Court under section 5 of the Limitation Act, 1963, while taking into account the fact that this matter is in respect of an order passed by the Family Court, exercising its powers under section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 {which corresponds to section 125 of the Code of Criminal Procedure, 1973 (falling under Chapter IX) being the old law}.

3. For the purpose of this matter, we need to consider and read section 19(2) of the Family Courts Act, 1984, carefully:-

"19. Appeal.—

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991."

4. A plain reading of the above provision of law clearly reveals that in the facts of the instant case, there is no scope for any appeal from an order passed by the Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (which dealt with maintenance under section 125 of the old law) and which is now squarely covered under section 144, falling under Chapter X of the Bharatiya Nagarik Suraksha Sanhita, 2023.

5. Since there is no scope for maintaining any appeal against an order passed by the Family Court under section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, there is no question of this Court exercising its discretion to condone the delay in preferring an appeal from an order therefrom.

6. The application is, therefore, liable to be dismissed and is accordingly dismissed.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice

jk/ds