



2026:AHC-LKO:22246

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
MATTERS UNDER ARTICLE 227 No. - 1093 of 2026**

Awadhesh Singh And Another

.....Petitioner(s)

Versus

Smt Angoora

.....Respondent(s)

Counsel for Petitioner(s) : Shivendra Pratap Singh,
Ashutosh Verma, Santosh
Mishra

Counsel for Respondent(s) :

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Santosh Mishra, learned counsel for petitioner as well as learned Standing Counsel for the State-respondents.
2. In light of the proposed order, notices to private respondents are dispensed with.
3. It has been submitted by learned counsel for the petitioner that a suit U/s 18 of Hindu Adoption and Maintenance Act, 1956 was preferred by the respondent for maintenance arraying Bhim Singh S/o Sajur Pal Singh as a respondent who was the husband of the respondent in the court of Civil Judge (Jr. Div.), Court No. 3 Unnao. In the said suit, it was alleged that her husband, namely, Bhim Singh has neglected the maintenance to her and has not fulfilled matrimonial obligations and in the matrimonial home the husband was totally under the influence of his elder brother and his wife.
4. The husband along with other relatives had started misbehaving with the respondent physically and mentally tortured her and they together threw Angoora Devi out of the matrimonial home. It has further been submitted that elder

brother of the Bhim Singh died and Bhim Singh-her husband started living with the wife of his elder brother and continued to neglect his wife (respondent). The respondent had lived for a period of 20-22 years along with her relatives and during this period no financial assistance or maintenance was given by her husband-Bhim Singh. It has further been stated that Bhim Singh was owner of the part of property situated at Gata No. 195 area 0.667 hect, Gata No. 343 area 1.325 hect. and land situated at Gata No. 778 area 0.678 hect. total of 2.659 hect in which his share was half of the aforesaid property. Apart from the above, there was a residential house in the village.

5. Bhim Singh had appeared in the suit proceedings and also filed his written statement but subsequently did not appear due to which the proceedings were continued ex-parte. The Civil Judge (Jr. Div.), Unnao considering the entire conspectus of the facts also took note of the fact that Bhim Singh had neglected to maintain his wife and also that she had been thrown out of the matrimonial home and consequently a case for maintenance was clearly made out and accordingly the suit proceedings were decreed by means of judgment and order dated 19.02.2007 directing respondents to pay maintenance of Rs. 800/- per month and the said amount was liable to be recovered from the property, the details of which are given in the order dated 19.02.2007 of which the husband had half share.

6. It seems that soon after the judgment and order dated 19.02.2007 was passed Bhim Singh died on 29.12.2008. The petitioner who is the nephew of Bhim Singh, the husband of the respondent states that Bhim Singh prior to his death on 12.05.2008 had executed a will in his favour where his entire property was willed to him. It is on account of the said transfer of the property that the petitioner had sought to challenge the judgment and order of the trial court dated 19.02.2007. It has further been submitted that Bhim Singh during his lifetime had also moved an application under Order 9 Rule 13 CPC for recall of the judgment and order dated 19.02.2007 which was

rejected on 05.06.2010.

7. The petitioners have stated that they came to know about judgment and order dated 19.02.2007 passed by Civil Judge (Jr. Div.) only on 19.12.2012 and accordingly had filed an appeal in the court of Additional District Judge, Unnao which was registered as Case No. 159/2018. The said appeal was filed after a delay of 11 years. In the application for condonation of delay, the petitioner submitted that the proceedings came to their knowledge only on 19.12.2012 and subsequently they have contacted their counsel who did not give them the correct legal advise that an appeal deserves to be filed against the judgment and order dated 19.02.2007. It is stated that it is only subsequently during the execution proceedings contacted another counsel and he was given legal opinion that an appeal can be filed pursuant to which the said appeal was filed.

8. The appellate court considering the grounds set up by the petitioner was of the considered view that even if as per the admission of the petitioner himself, he came in knowledge of the proceedings of the trial court on 19.12.2012 and still the appeal was filed highly belatedly after 6 years thereafter. He was further of the view that the petitioner himself was not a party before the trial court and only on account of the fact that the disputed property had not been willed in favour of the petitioner, he had sought to challenge the order dated 19.02.2007.

9. It is in the aforesaid circumstances that by means of present writ petition the petitioner has challenged the validity of the order dated 01.11.2025 passed by appellate court as well as judgment and order dated 19.02.2007 passed by Civil Judge (Jr. Div.), Unnao. It is noticed that the proceedings had been initiated U/S 18 of Hindu Adoption and Maintenance Act, 1956. According to the aforesaid provisions a Hindu wife is entitled to live separately from her husband without forfeiting her claim to maintenance and Clause 2(b) further provides that

her entitlement to live separately has to be on account of the fact that she had been treated with cruelty so as to cause the reasonable apprehension in her mind that it will be harmful and injurious to live with her husband.

10. She has further stated that provisions of Section 18(2) were also attracted in the present case inasmuch as her husband has started living with wife of his elder brother after his death. It is in aforesaid circumstances that the husband, namely, Bhim Singh had duly appeared before the trial court and participated in the said proceedings. The trial court has found that the plaintiff was living separately from 20-22 years and her husband had not given any form of maintenance to her during this period. Apart from which it was also on record as per the contention of the plaintiff that she was physically and mentally tortured and also that the elder brother of her husband was died in the meanwhile and the respondent had continued to live with his brother's wife in the matrimonial home. Accordingly, a case for maintenance was clearly made out and the decree was passed in favour of respondent on 19.02.2007 holding that she was entitled for maintenance of Rs. 800/- per month and the said amount was directed to be recovered from the property owned by her husband, the details of which was given in the said order.

11. It is noticed that during the lifetime of husband an application for setting aside of the said order was also passed which was dismissed on 05.06.2010. It is in the meanwhile on 12.05.2008 share of Bhim Singh-husband of the plaintiff was willed in favour of the petitioner who was his nephew and it is in the said capacity he had sought to challenge the proceeding culminating in judgment and order dated 19.02.2007 in favour of the opposite party. The appeal was filed by the petitioner after a delay of 18 years.

12. Apart from the above, the appellate court has noticed that the petitioner was a party in the suit proceedings before the

Civil Judge (Jr. Div.), Court No. 3, Unnao and accordingly, even if he was aggrieved in any manner by the judgment and order of the trial court, such a person can file an appeal but he has to take a leave of the court under **Section 96-100 of the Code of Civil Procedure, 1908.**

13. Accordingly, learned counsel for the petitioner has fairly submitted that he did not file any application for seeking leave to appeal and consequently in any view of the matter, the appeal preferred by the petitioner itself was not maintainable.

14. Apart from the above, the appellate court has duly considered all the arguments raised by the petitioner for condonation of delay and has found that the petitioner was very well aware of the judgment and order dated 19.02.2007 on 19.12.2012 but there is satisfactory explanation forthcoming for the delay of at least 6 years in filing of the said appeal. It is in the aforesaid circumstances, I do not find any ground for interference in the impugned order dated 19.02.2007 and 05.06.2010. Accordingly, the writ petition is bereft of merits and is hereby **dismissed.**

March 30, 2026

Ravi/

(Alok Mathur,J.)