

GAHC010194952018



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

Case No. : I.A.(Civil)/3201/2018

ANIMUL HOQUE
S/O LATE AFAJUDDIN AHMED, R/O VILL. BAKURPARA, KALPANA NAGAR,
P.O. GOALPARA, DIST. GOALPARA, ASSAM.

VERSUS

THE REGIONAL MANAGER AND ANR
UNITED INDIA INSURANCE CO. LTD. REGIONAL OFFICE , GUWAHATI G.S.
ROAD, CHRISTIAN BASTI , P.O. GUWAHATI 781005, DIST. KAMRUP (M),
ASSAM.

2: MOZIDA BEWA
W/O LATE AKTAR HUSSAIN
VILL. NAYAPARA
P.O. GOALPARA-783101
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR. A R AGARWALA

Advocate for the Respondent : MR A N DAS

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 28.06.2023

Heard Mr. A. R. Agarwala, learned counsel for the applicant. Also heard Mr. A. N. Das, learned counsel for the respondent.

2. This is an application under Section 5 of the Limitation Act, 1963, for condonation of delay of 881 days in preferring the connected MAC Appeal against the judgment and order dated 15.12.2015, passed by the learned Member, MACT, Goalpara, in MAC Case No. 264/2009.

3. It is submitted by the learned counsel for the applicant that the judgment and award was passed on 15.12.2015, but the applicant came to know about the same only on 18.01.2016 and thereafter, on several occasions, he tried to meet his engaged counsel, but he could not meet him. However, on 02.05.2016, he was called by his engaged counsel to come to his chamber and asked to apply for certified copy. And, thereafter also, he could not meet him again on several occasions. But, finally, his engaged counsel advised the him to obtain the certified copies and to consult with the counsel from the High Court and accordingly, he tried to meet the counsel for the High Court on many occasions, but due to various reasons, he could not meet his counsel and also due to his injuries, he was not in a position to come to the chamber of the counsel and after a long endeavour, he could meet the counsel of the High Court only on 04.01.2017 and accordingly handed over the certified copy to him. The appellant was then asked to go for a discussion on 13.01.2017, but due to his

illness, he could not meet his counsel on 13.01.2017 and after his recovery, as per advice of the engaged counsel of the High Court, he again consult with his counsel of the lower Court and applied for a fresh certified copy of the judgment and after obtaining the same and also after the long summer vacation of the High Court, he could meet his counsel only on 16.07.2018. Thereafter, the concerned advocate of the High Court, after going through the entire records and finding good grounds for appeal, preferred the connected appeal with a delay of 881 days.

4. It is further submitted by the learned counsel for the applicant that the applicant, being an illiterate person, had no knowledge about the legal aspects or about the time period for filing the appeal and also due to lack of proper advice and guidance of the engaged counsel, viz-a-viz his financial constraints and disability, he could not meet his counsel within the statutory time period nor he could meet the counsel in the High Court within time due to various reasons. There was no intentional laches or negligence on the part of the applicant, but for the circumstances as described above, the appellant was prevented from filing the appeal within statutory period of limitation. Further it is submitted by the learned counsel for the applicant that it is a settled law that sufficient cause under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. If the explanation set forth are acceptable and do not speak *mala fide* or they are not put forth as part of a dilatory strategy, the Court should show utmost consideration and should take a liberal approach.

5. The learned counsel for the applicant also relied on the decisions of this Court passed in I.A.(Civil) No. 4075/2018, dated 01.08.2022, and I.A.(Civil) No.

4277/2018, dated 01.08.2022, wherein, this Court, following the ratio laid down by the Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.**, reported in **AIR 1987 SC 1353**, had condoned the delay of 632 days and 756 days, respectively.

6. In I.A.(Civil) No. 4277/2018, this Court has observed as under:

*"Following the ratio laid down by the Apex Court in the case of **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.**, reported in **AIR 1987 SC 1353**, in the facts of this case the applicants have been able to establish sufficient cause. However, it is also to be noted that the Insurance Company should not be saddled with liability of interest for a long period of 755 days. At this stage, A. R. Agarwala, learned counsel for the applicants/appellant states that this Court may take a lenient view and the applicants are ready and willing to forego interest for 550 days."*

7. Further it is submitted by the learned counsel for the applicant that if the delay is not condoned, giving chance to the applicant to agitate the judgment and award passed by the learned Member, MACT, he will be prejudiced and as these cases are under the social legislation, the Court should take a liberal approach while condoning the delay.

8. Mr. A. N. Das, learned counsel for the respondent, by filing their written objection against the present petition, accordingly submits that the applicant could not give proper explanation for delay of 881 days in preferring the connected appeal and the cause shown are casual in nature and not sufficient so as to condone the delay of 881 days. The story brought by the applicant is concocted story and in total disregard to the concept of "sufficient cause" which prevents the applicant to prefer the appeal within time. Further it is submitted by the learned counsel for the respondent that from the petition itself, it is evident that the certified copy was applied more than 1 (one) year later and

which itself is sufficient to prove the negligence of the applicant in preferring the connected appeal. More so, his physical disability cannot be a cause for the delay as he himself stated in his petition that on several occasion, since 2016, he was trying to meet his counsel though for some various reasons, he could not met his counsel, as explained in his petition. Accordingly, it is submitted that there is no satisfactory explanation of delay of 881 days in preferring the connected appeal and hence, the same is liable to be dismissed.

9. In this context, learned counsel for the applicant further submits that the reasons, which were explained in his petition, are the sufficient reason which prevented the applicant in preferring the appeal within the stipulated time period.

10. I have considered the submissions made by the learned counsels for both sides and also perused the case record and the pleadings of the parties.

11. It is a fact that there is a considerable delay of 881 days in preferring the connected appeal as the judgment and award was passed on 15.12.2015 by the learned Member, MACT, Goalpara, in MAC Case No. 264/2009. But, the applicant brought various explanations in his petition as to how he was prevented from preferring the appeal within the stipulated time period. Though the delay is not explained day to day basis, but it is seen that on several occasion the applicant tried to contact his engaged counsel and due to lack of proper guidance and instructions, he could not even applied for the certified copy within time. More so, it also cannot be denied that the petitioner, being layman, may not be aware

about all the aspects of law or without the proper instruction of the engaged counsel, the petitioner may not aware about the legal prospects of filing the appeal with a delay. However, in the same time, it also cannot be denied that there is a considerable delay even for applying for the certified copy of the judgment and order, but considering the entire facts and circumstances of the case and also considering the view of the Hon'ble Apex Court and also for the ends of justice, I hereby allow the present interlocutory application. Accordingly, the delay of 881 days in preferring the connected MAC Appeal stands condoned. However, it is provided that the applicant shall not be entitled to claim for any interest for 550 days.

12. Registry to register the connected MAC Appeal and list the same for Admission hearing after the ensuing Summer Vacation.

13. The Interlocutory Application stands disposed of in terms above.

JUDGE

Comparing Assistant