

Court No. - 19

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 181 of 2023

Appellant :- Shashi Bhushan @ Satya Bhushan

Respondent :- Jagatpal And 3 Others

Counsel for Appellant :- Ambrish Kumar Pandey

Hon'ble Jaspreet Singh, J.

Heard learned standing counsel for the appellant.

The instant appeal has been preferred against the judgment and order dated 29.09.2010 passed by the MACT/Additional District Judge, Gonda, whereby the claim petition was partially allowed.

While filing the instant appeal, an application seeking condonation of delay has also been moved inasmuch as the appeal was barred by 3943 days.

This Court on 10.10.2023, on the behest of the learned counsel for the appellant, who sought time to file a better affidavit had adjourned the matter. Thereafter again on 18.10.2023 and 28.10.2023 time was sought but till date no better affidavit has been filed to explain the delay of 3943 days.

Learned counsel for the appellant submits that he does not want to file any additional/better affidavit, however, he relied upon the decision of the Apex Court in **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others, (1987) 2 SCC 107** to submit that in the aforesaid circumstances, the Court ought to have take a liberal view to condone the delay and the technicalities may not prevail and so far as possible, the matter should be decided on merit.

It is no doubt true the Courts while dealing with the application for condoning the delay is to adopt a pragmatic approach, however, at the same time, it is necessary to notice the contents of the affidavit filed in support of the application seeking condonation of delay and for ready reference, Paragraph 2 to 6 of the affidavit is being reproduced hereinafter:-

"2. That at the time of incident, the appellant sold the alleged vehicle and this fact was mentioned in the case and the sell letter was also placed before the Court concern.

3. That the after the evidence, the counsel for the appellant told to him that the case be closed after appreciating the evidence.

4. That the learned M A C T was wrongly appreciated the evidence and awarded against the appellant and the driver. It is necessary to mentioned here that the driver who drive the vehicle, was not the driver of the appellant but he was appointed as driver of the person in whose favour the vehicle was sold by the appellant.

5. That now when the recovery warrant was issued against the appellant and was served to the appellant only then the appellant come to know about the order.

6. That after received the recovery warrant, the appellant rush to the counsel for inspect the file and found that the order was passed by the Court concern in the year of 2010, then the appellant prepare the documents and consult to the counsel to file the case in the Hon'ble High Court."

Having noticed the aforesaid and despite having persuaded itself to take a lenient view, the Court is still not able to reconcile with cause shown in the affidavit and unless and until any sufficient case arises no leverage can be given to the appellant. The Apex Court in **N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123** has laid down the proposition that it is not the length of delay which is material rather it is the sufficiency of cause which is to be looked into. The Apex Court in **Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr., (2012) 3 SCC 563** has also noticed this aspect of the matter. Even the Apex Court in **Ram Nath Sao @ Ram Nath Sahu and others v. Gobardhan Sao and others (2002) 3 SCC 195** and **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649** has propounded that so far as possible the Courts must have a lenient view while condoning the delay and generally the cause shown must be accepted and refusal should be the exception but in both the decisions, it has also been laid down by the Apex Court that the Courts are required to scrutinize as to whether the cause shown is bonafide and not actuated by negligence or malafides.

Looking at the contents of the affidavit in light of the dictum which has been noticed hereinabove, it does not reveal any cause muchless any sufficient cause. Even if the Court takes a lenient view even than the humongous delay of 3943 has not been explained. The Court also has to take note of certain rights which accrue to the other contesting party on the account of delay. Thus, balancing the rights of the parties, this Court is unable to accept the explanation as sufficient to condone 3943 days.

In view of the aforesaid, the **application for condonation of delay is rejected so also the appeal on the ground of limitation.** Consigned to record.

The statutory amount as deposited by the appellant shall be remitted to the Tribunal concerned forthwith.

Order Date :- 3.11.2023

Rakesh/-