

GAHC020004672022



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

Case No. : I.A.(Civil)/139/2022

THE ORIENTAL INSURANCE CO.LTD.
HAVING ITS REGISTERED AND HEAD OFFICE AT ORIENTAL HOUSE A-
25/27,ASAF ALI ROAD, NEW DELHI - 110002, AND REGIONAL AND
DIVISIONAL OFFICES IN SEVERAL PLACES, INCLUDING AT REGIONAL
OFFICE AT GUWAHATI,ASSAM AND A DIVISIONAL OFFICE AT DIMAPUR IN
THE STATE OF NAGALAND

VERSUS

SMTI. AYMANA KHATUN AND 2 ORS
W/O LATE ASUR UDDIN SHEK,
R/O H/NO.1022, SADHUBHASA,
P.S - GAURIPUR, SUB-DIV - DHUBRI, DIST – DHUBRI,
ASSAM – 7833392

2) MR. AMINOL SHEK
S/O LATE ASUR UDDIN SHEK
R/O H/NO.1022 SADHUBHASA
P/S - GAURIPUR SUB-DIV - DHUBRI DIST - DHUBRI
ASSAM - 783339

3:SHRI. ROHIT KUMAR MANDAL
C/O RAM JATAN MANDAL
R/O FANCY ALI WARD NO.1
P.O - JORHAT
ASSAM(OWNER OF THE TRUCK TATA SE 1613 B/R NO.AS-19 C/5060

Advocate for the Petitioner : V. DEVNATH

Advocate for the Respondent :

Linked Case : MACApp./7/2022

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Advocate for : V. DEVNATH
Advocate for : TONGPOK PONGENER appearing for SMTI. AYMANA
KHATUN AND 2 ORS

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 19-01-2024

1. Heard Mr. V. Devnath, learned counsel for the applicant/appellant. I have also heard Mr. Lakneyi Phom for the opposite party Nos.1 & 2 and Ms. Mika H. Aye for the opposite party No.3.
2. This is an application filed by the applicant Insurance Company under Section 5 of the Indian Limitation Act, 1963, praying for condonation of delay of 916 days in preferring the connected MAC Appeal against the judgment and order dated 19.11.2019, passed by the Member MACT, Kohima in MAC case no. 15/2019 whereby a sum of Rs 18,48,000/- (Rupees eighteen lakhs forty eight thousand) has been awarded in favour of the claimant (Opposite party No.1 & 2) and directed the appellant to deposit the final awarded amount within a period of 30 days, failing which an interest of 9% per annum shall be added to the awarded amount from the date of filing of the claim petition.
3. The applicant has explained the grounds of delay in preferring the connected MAC Appeal in para-No. 6, 7 & 8 of

the appeal.

4. The learned counsel for the applicant/appellant submits that on receipt of the said judgment and order, it could not be forwarded to the appellant's Divisional Office situated at Dimapur in time due to the Covid-19 pandemic and on receipt of the judgment and order dated 19.11.2019, from its penal counsel based at Mokokchung on 02.05.2022, it was forwarded to the Regional Office at Guwahati, Assam on 04.05.2022, for approval in preferring the appeal. The Regional Office on receipt of the entire file had forwarded it to its Penal Advocate at Guwahati, Assam for obtaining legal opinion, who furnished the legal opinion on 19.05.2022 to the Regional Office. Thereafter, the Regional Office on 20.05.2022 forwarded the file to the Divisional Office to prefer appeal before the Hon'ble Gauhati High Court, Kohima Bench and the Divisional Office on receipt of the file from the Regional Office had forwarded the same to the penal counsel at Dimapur on 26.05.2022 for preparation and filing of appeal against the impugned judgment and order dated 19.11.2019. However, the appellant's counsel was indisposed for one month due to typhoid and prepared the appeal and the connected interlocutory application and forwarded to Divisional Office in Dimapur on 22.08.2022 and finally, it was filed on 23.08.2022. It is submitted that the period of limitation being 90 days from the date of judgment and order dated 19.11.2019, it expired on 16.02.2020. There has been a delay of 916 days in filing the instant appeal and the appeal has been caused due to the reasons stated above and not due to willful negligence or default on the part of the appellant and

prays that the delay in filing the appeal be condoned.

5. By filing additional affidavit, the learned counsel for petitioner stated that there has been a delay of only 201 days excluding the lock down period. In support of his claim the learned counsel for the applicant/appellant submitted the order of the Hon'ble Supreme Court passed in Suo moto case whereby due to Covid-19, lock down the limitation from 15.3.2020 to 28.2.2022 has been excluded.

6. Mr. Laknaye Phom, learned counsel for opposite party Nos. 1 and 2 on the other hand submits that the applicant/appellant has not shown sufficient cause for condonation of delay of 916 days. He further submits that the applicant/appellant has taken a very casual and negligent attitude in the matter because of which the delay occurred. He further submits that the settled principle of law is that, the day to day delay in filing appeal is required to be explained by the applicant. However, in the instant case, no such specific explanation has been made in the application other than the broad and general statement. He further submits that the statement that the impugned judgment and order dated 19.11.2019, was submitted to the applicant/appellant by its penal counsel only on 02.05.2022, due to Covid-19 pandemic is contrived and preposterous. And contended that no doubt, lockdown during the pandemic was imposed, but it did not continue for more than two years as sought to be projected in the interlocutory application. It is also submitted that the lockdown began from March, 2020, and starting from June, 2020, phased unlock began nationwide and the Court and public offices also started functioning. There was

sufficient time between November, 2019 to March, 2020 and starting from June, 2020 onward for the panel counsel to submit the impugned judgment and order dated 19.11.2019, but no explanation whatsoever has been made for the delay caused during the period(s) when total lockdown was not in existence and the applicant/appellant has to show sufficient cause for the inordinate delay. As such, the present application for condonation of delay in filing connected appeal is liable to be dismissed with cost.

7. Ms. Mika H. Aye, the learned counsel for opposite party No, 3, while reiterating the contention made in the affidavit-in-opposition contended that the law is settled that the applicant must satisfy the Court that he was prevented by any sufficient cause and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. And in the instant case, the applicant/appellant failed to show sufficient cause of delay and the delay in the instant case has been due to intentional negligence on the part of the appellant with ulterior motive. She further submits that the argument in MAC Case no. 15/2019 was heard on 18.11.2019, and on the next date i.e., on 19.11.2019, the judgment and award was pronounced in favour of the opposite party nos. 1 and 2. She further submits that the record clearly shows that the extra copies of the judgment and order dated 19.11.2019, was issued to all the parties on the date of pronouncement of the judgment and award and as such, the case of the appellant, merely stating that the office of the appellant was not in receipt of the judgment and order dated 19.11.2019 on time

is not a sufficient cause to condone the delay. It is further submitted that the law is settled that the condonation of delay is not a matter of right and the applicant is to set out the case showing sufficient reasons which prevented them to come to the Court within the stipulated period and the limitation. In the instant case, there has been undue delay in preferring appeal prior to the covid-19 lock down and after the lock down was over. But, the applicant/appellant has failed to explain and show sufficient cause of delay and merely making a general excuse of the Covid-19 pandemic does not improve the case of the applicant in any manner. And as the applicant has miserably failed to satisfactorily explain that there was any sufficient cause, which prevented the applicant in preferring the appeal, the same is liable to be dismissed.

8. In support of her submission, the learned counsel for the opposite party No. 3, has cited the decisions of the Hon'ble Supreme Court in the following cases:

9. In the case of **Sagufa Ahmed and Ors Vs. Upper Assam Polywood Products Private Limited and Ors** reported in **(2021) 2 SCC 317**, the Hon'ble Supreme Court at Para 17, observed as follows:

"17. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lock down, from initiating proceedings within the period of limitation prescribed by general or special law.

It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them."

10. In the case of **Balwant Singh (dead) Vs. Jagdish Singh and Ors** reported in **(2010) 8SCC 685**, the Hon'ble Supreme Court at para 30, 32, 35 and 38,observed as follows:

"30. In the case of Union of India v. Tata Yodogawa Ltd., this Court while granting some latitude to the Government in relation to condonation of delay, still held that there must be some way or attempt to explain the cause for such delay and as there was no whisper to explain what legal problems occurred in filing the Special Leave Petition, the application for condonation of delay was dismissed.

32. It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly.

35. The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an

excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

38. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications."

11. In the case of **M.M. Sangma and Ors Vs. State of Meghalaya and Ors** reported in **2022 SCC Online Megh 478**, the Hon'ble Supreme Court at Para 30, 31 and 32 observed as follows:

"30. This Court in the case of Deliha D. Sangma in WP(C) No. 74 of 2017 has dealt with the issue of delay and laches at para 22,

23 and 24 which is reproduced as under:

"22. The maxim "Vigilantibus Non Dormientibus Jura Subveniunt" which means that the law assists those who are vigilant with their rights and not those that sleep thereupon is very much applicable to the case of the petitioner as regard the approach to the authority with the representation for re-survey and re-measurement of the land acquired considering the fact that there is a gap of almost 27 years from the year of acquisition which is 1983 to the year 2010 when the first representation was made.

23. In the case of State of M.P & Ors v. Nandlal Jaiswal &Ors: (1986) 4 SCC 566, para 24, the Hon'ble Supreme Court has held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction..."

24. Again, in the case of Chennai Metropolitan Water Supply and Sewerage Board & Ors. v. T.T. Murali Babu: (2014) 4 SCC 108, para 16 the Hon'ble Supreme Court has held as follows:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved

person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in must circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of the litigant-a litigant who has forgotten the basic norms, namely, "procrastination is the thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

31. The maxim "*Vigilantibus Non Dormientius Aequitas Sebventil*" which means that Equity aids the vigilant, not the ones who sleep over their rights can also be said to be applicable in the case of the petitioners.

32. In the case of Maharashtra State Road Transport Corporation(supra) at paragraph 11 relied upon by the State respondents, the Hon'ble Supreme Court on the doctrine of laches has observed as follows:

"11...Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of

that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.."

12. I have heard the submission made by the learned counsel for the parties. From the record, Annexure-A, in the affidavit-in-opposition filed by the respondent no. 3, it appears that the judgment was pronounced on 19.11.2019, and on the same date, copies of the judgment and order was issued to the parties which has not been denied by the applicant/appellant. The applicant though tried to take the plea of National Lockdown due to COVID-19 as one of the cause for delay; however, it is pertinent to mention here that the lock down started only on 23.03.2020, whereas, the period of limitation for preferring the appeal in the instant case expired much before the lock down started that is on 16.02.2020. The National Lockdown started only after 36 days after lapse of the prescribed period of limitation in the instant case, and the applicant has not explained satisfactory what prevented them to approach the Court before imposition of National Lockdown. And in the body of the petition or in the prayer clause of the application for condonation of delay in filing the connected appeal also, the delay of condonation has not been computed. The law is settled that the applicant has to show sufficient cause and explain the day-to-day delay in the application setting out the cause to show sufficient reason which prevented them to appear before the Court within the stipulated period of

limitation. However, in the instant case, the applicant has not made any endeavor to explain the day to day delay with a reason, except for a broad and general statement within the authorities of the appellant company without satisfying the Court that the appellant had sufficient cause for not preferring the appeal or making the application within the limitation period. This clearly shows that the applicant/appellant has hardly anything to explain the delay in filing the connected appeal and it also shows that the applicant/appellant is trying to evade the limitation and overcome this hurdle without any sufficient cause. The record, thus show the willful negligence, coupled with a perfunctory and casual attitude to the law of limitation. It is to emphasize that under Section 5 of the Limitation act, the period of limitation to file an appeal is 90 days. The appellant is the Insurance Company, they are well aware of the Limitation Act and when to file appeal against the award passed against them. The impugned judgment and order was passed on 19.11.2019, and the appeal was filed only on 23.08.2022, that is after the delay of about 916 days i.e., almost after two years of the order. The applicant has to explain the entire period of delay that it was prevented by sufficient cause in preferring the appeal within the period of limitation. But no sufficient and tenable cause to explain the delay is forthcoming at all from the appellant.

13. Considering the decisions of Apex Court referred herein above, as well as for the reasons stated in the forgoing paragraphs, this Court is of the considered opinion that the applicant has failed to show sufficient cause for condoning the

delay in preferring the appeal in the instant case.

14. Accordingly, this application for condonation of delay is dismissed. Resultantly, the connected MAC Appeal No.7/2022 also fails and is dismissed being barred by limitation.

Sd/-
JUDGE

Comparing Assistant