

Court No. - 5

Case :- CROSS OBJECTION No. - 6 of 2020

Objector :- Smt. Geeta Rani Fafo No. 705/2013

Respondent :- New India Assurance Co. Ltd. Thru. Asstt. Manager And Another

Counsel for Objector :- Ravindra Pratap Singh

Counsel for Respondent :- Inder Preet Singh Chadha

Hon'ble Rajnish Kumar,J.

C.M.Application No.82369 of 2020

1. Heard, Shri Ravindra Pratap Singh, learned counsel for the Cross Objector/claimant and Shri Inder Preet Singh Chadha, learned counsel for the respondent no.1. None has put in appearance on behalf of respondent no.2 despite sufficient service.

2. Learned counsel for the Objector submits that FAFO No.705 of 2013 was filed by the respondent No.1 against the impugned judgment and award dated 22.02.2013 passed in Motor Accident Claim Petition No.75 of 2011; Smt. Geeta Rani Versus Syed Naseem and another by the Motor Accident Claims Tribunal/Additional District Judge, Court No.35, Barabanki and the objector was under impression that the claim for enhancement would be considered under Order 41 Rule 33 of CPC, therefore no Cross objection was filed. However subsequently she realized that in regard to applicability of the said provision in appeals filed under Section 173 of the M.V.Act for the purpose of enhancement of compensation there are different views amongst the Hon'ble Benches of the High Court and there are also apprehension regarding withdrawal of appeal by the Insurance Company, so it was advised to the Objector in the first week of March 2020 to file the Cross Objection. Accordingly this Cross-Objection has been filed.

Thus the delay is not deliberate or intentional. He further submits that since the appeal of the respondent no.1-Insurance Company is already pending, in which the quantum of compensation is also to be considered, therefore also the Cross-Objection may be considered alongwith the appeal. He relies on **Wadhya Mal Versus Prem Chand Jain and another; (1981) 3 SCC 122.**

3. Per contra, learned counsel for the respondent no.1-Insurance Company submits that this highly belated Cross-Objection has been filed with misconceived grounds only after the appeal filed by the respondent no.1 was heard finally on 07.10.2017 and 09.11.2017, when the judgment in the said case was reserved and during course of arguments the Hon'ble Bench had observed that the enhancement of awarded amount would not be payable as the appeal for enhancement of amount or Cross-Objection has not been filed by the claimant-respondent in the said appeal. However the judgment could not be delivered in the said case at that point of time and the matter was released. Therefore it is nothing but an afterthought. Even otherwise the submission is that for such a long delay not even a single explanation has been given, therefore it is liable to be dismissed.

4. I have considered the submissions of learned counsel for the parties and perused the record.

5. The First Appeal From Order No.705 of 2013 was filed by the respondent no.1 against the judgment and award dated 22.02.2013 on 18 July 2013. In the said appeal the respondent no.1 had put in appearance through her counsel, who had filed his 'Vakalatnama' on 03.09.2013, which is apparent from record of the said appeal, which is connected with this objection. Rule 22 of Order 41 of Civil Procedure Code, as amended by

High Court Amendment of Allahabad which has been amended through Notification dated 08.08.1994 w.e.f. 22.01.1994, provides that the Cross-Objection may be filed within a period of one month from the date of service on him or his pleader of notice of the day fixed for hearing or appearance in the appeal, therefore this Cross Objection could have been filed within one month from 03.09.2013, whereas it has been filed on 17.12.2020 i.e. after more than seven years and three months.

6. The only explanation given by the Objector in his objection for condonation of delay is that upon consultation with her counsel it was told to her that for enhancement of compensation there is a power under Order 41 Rule 33 CPC and so on the advice of the counsel she did not file the appeal. However subsequently on realizing that there are different views of the different Benches, therefore on the advice of the counsel this Cross- Objection has been filed, but nothing has been brought on record or shown to substantiate it. Even otherwise it cannot be a ground for condonation of delay.

7. The respondent has taken an objection that while hearing the appeal filed by the respondent no.1 on 07.10.2017 and 09.11.2017 and while reserving the judgment on 09.11.2017, the Court had observed that enhancement is not possible because no Cross-Objection and appeal has been filed and only thereafter this Cross-Objection has been filed, therefore it is nothing but an after thought. No reply to the objection has been filed by the Objector, therefore the objection raised by the respondent has not been disputed. No explanation for such a long delay has been given and no sufficient cause has been shown for condonation of delay.

8. So far as the judgment relied by learned counsel for the Objector in **Wadhya Mal Versus Prem Chand Jain and**

another (Supra) is concerned, in the said case the judgement and award dated 31 March 1977 was challenged in two First Appeals bearing First Appeal No. 248 of 1977 and the First Appeal No.266 of 1977. There was some exparte proceeding and the application was moved to set aside the same, which was rejected vide order dated 4 March, 1978 and the appeal against the said order was held not maintainable. Thereafter the appeal against the award was filed. Therefore the Hon'ble Supreme court observing that there was at least some justification for the appellant being mislead as to when he should have preferred his appeal and the award, which he seeks to challenge is under appeal by respondent no.1 and respondent no.2 in the said case and held that the appeal of the present appellant may also be entertained and may be disposed of on merit alongwith the said two appeals, though there was some delay in preferring the appeal. In the present case there is unexplained delay of more than 7 years 3 months from the date of putting appearance in the appeal and no sufficient cause has been shown for the said period after the Objector had put in appearance in the appeal and the appeal filed by the respondent no.1 has also been got dismissed as not pressed by him today. Therefore the Objector is not entitled for any benefit of the same.

9. The Hon'ble Supreme Court, in a recent judgment and order dated April 8, 2024 in the case of **Pathapati Subba Reddy (Died) by LRs and others Versus The Special Deputy Collector (Land Acquisition); Special Leave Petition (Civil) No.31248 of 2018 (Supra)**, after considering several judgments of the Hon'ble Supreme Court and the relevant provisions of law of limitation Act has clarified the legal position in regard to the law of limitation and the principles for condonation of delay in paragraph 26, which are extracted here-in-below:-

"26. On a harmonious consideration of the provisions of the law, as

aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;
- (vii) Merits of the case are not required to be considered in condoning the delay; and
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

10. In view of above, this court is of the view that the application for condonation of delay in filing the Cross-Objection is liable to be dismissed as no sufficient cause has been shown for such a long delay of more than 7 years and 3 months.

11. The application for condonation of delay is, accordingly, **dismissed**. Consequently the Cross-Objection is **dismissed**. No order as to cost.

(Rajnish Kumar,J.)

Order Date :- 2.5.2024

Banswar