

Court No. - 4 AFR

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 116 of 2023

Appellant :- Oriental Insurance Company Ltd., Lucknow Thru. Manager

Respondent :- Smt. Nayanshri Yadav And Others

Counsel for Appellant :- Subhash Chandra Gulati

Counsel for Respondent :- Uttam Kumar Awasthi, A.Z. Siddiqui, Ved Prakash Sharma

Hon'ble Rajnish Kumar, J.

(C.M. Application No.1 of 2023)

1. Heard, Ms. Pooja Arora, Advocate holding brief of Sri S.C. Gulati, learned counsel for the appellant and Sri Prateek Tiwari, Advocate holding brief of Sri A.Z. Siddiqui, learned counsel for the respondent no.5. Neither anybody else appeared on behalf of the other respondents nor any objection to the application for condonation of delay has been filed by the other respondents.

2. This appeal has been filed against the judgment and award dated 14/15.12.2022 passed in M.A.C.P. No.320/2018(Smt.Nayanshri and others versus Ramdas and others) by Motor Accident Claims Tribunal, Hardoi.

3. Learned counsel for the appellant submits that file of the case was missing from the divisional office and after it was traced, it was found that the period of limitation has expired, therefore this appeal has been filed thereafter without any delay, therefore, the delay is liable to be condoned and appeal is liable to be heard and decided on merit. He relies on ***State of Jharkhand and others versus Ashok Kumar Chokhani and others; AIR 2009 SCC 1927 and State of J & K and others versus Mohammad Maqbool Sofi and others; AIR 2010 SC 1445.***

4. Per contra, learned counsel for the respondent no.5 submits

that it is not in dispute by the appellant that file of the case was received in the Divisional Office on 04.01.2023 and thereafter it was not traceable and it could be traced only on 30.05.2023. Therefore the negligence of the employees of the appellant insurance company is apparent. Even otherwise no sufficient explanation has been given. Thus the appellant is not entitled for any concession from this Court and application for condonation of delay is liable to be dismissed. Consequently, the appeal is liable to be dismissed. He relies on judgment and order dated 08.04.2024 passed in ***Pathapati Subba Reddy(Died) by L.Rs & Ors. versus The Special Deputy Collector(LA); (2024) 4 S.C.R.241.***

5. I have considered the submission of learned counsel for the parties and perused the explanation given by the appellants.

6. Office has reported a delay of 103 days in filing the appeal. Perusal of the affidavit filed in support of the application for condonation of delay indicates that affidavit was prepared with the blank columns in paragraphs 2,3,4 and 5 and those columns have been filled by pen subsequently. The grounds given in paragraph 2 to 5 are extracted hereinbelow:-

"2. That the file of the above noted case was sent to the regional office, Lucknow by its Divisional office of the appellant at Lucknow on 04.01.2023.

3. That the said case file was not traceable as it was not kept at proper place and after search of large numbers of file including the decided files the file was found in one of bundle of files on 30.05.2023.

4. That after discovery of the said file it was found that last day of limitation for filing appeal in this Hon'ble Court was 19.03.2023.

5. That the F.A.F.O. could not be filed by 19.03.2023 due to the aforesaid reason."

7. Perusal of the aforesaid explanation given by the appellants indicates that the affidavit was prepared with blank places to fill in the blanks giving the various dates before filing the appeal to

explain the delay. The explanation for delay given in the affidavit indicates that the file was received in the Divisional Office on 04.01.2023. Thereafter it was not traceable, as it was not kept at the proper place and it could be traced in one of the bundles of file on 30.05.2023 but the details of bundles of file and as to how it was kept in the said bundles of file has not been disclosed. When it was found, the limitation for filing appeal had already expired on 19.03.2023. It shows that the correct facts have not been disclosed and after preparing the appeal and affidavit, the dates have been filled in the blank columns by pen to get the delay condoned. The explanation has also been given in a very casual manner. Even otherwise, if the facts were correct and file was traced on 30.05.2023, there is no explanation for the subsequent period till the date of filing. It appears that the correct facts have not been given and the dates have been filled in subsequently, may be after preparing the records, otherwise the dates would have been typed with the affidavit. Thus, it is apparent that the appellant has been negligent in pursuing the matter and the explanation is not bonafide. The period of delay is immaterial where the explanation is not bonafide and appears to be concocted and not sufficient, which is in the instant case.

8. The appeal under Section 173 of Motor Vehicles Act, 1988 may be preferred within ninety days from the date of award. Second proviso to Section 173 provides that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Therefore, this Court has to see as to whether the appellant was prevented by sufficient cause from preferring the appeal within time or not. Thus this Court has to see as to whether the grounds taken by applicants/appellants are sufficient for condonation of delay

on account of which he was prevented from preferring the appeal in time or only the excuses have been given. As disclosed above the appellant has not given the sufficient ground for condonation of delay. Only the excuses have been given. The ground is also not bona fide, rather appears to be concocted as discussed above, what to say of sufficient ground.

10. The Hon'ble Supreme Court, in the case of ***K.B. Lal (Krishna Bahadur Lal) Vs. Gyanendra Pratap and Other; 2024 (42) LCD 828***, has held that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant. The relevant paragraph 10 is extracted here-in-below:-

10. There is no gainsaying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (See Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (See P.K. Ramachandran v. State of Kerala and Anr., (1997) 7 SCC 556). Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (See Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649, and are reproduced as under:

"21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. 21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. 21.3. (iii) Substantial

justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

*21.10. (x) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
....." (emphasis supplied)*

Having perused the application under Order IX, Rule 7 of the CPC dated 23.11.2020, filed by the appellant, and the accompanying affidavit, wherein the appellant had sought the benefit of Section 5 of the Limitation Act, for condonation of a delay of almost 14 years, we find there was no satisfactory or reasonable ground given by the appellant explaining the delay. We say this for two reasons. First, it is an admitted position by the appellant himself that upon an inspection of the case file in the year 2011,

he came to know about the order dated 06.09.2006, by which the Trial Court had decided to proceed ex-parte against him. What prevented the appellant from filing the application under Order IX, Rule 7 that year itself has not been satisfactorily explained at all, as the first application was only filed in the year 2017. Secondly, the explanation offered by the appellant, which is that the advocate appointed by him did not pursue the matter diligently, and then another advocate was appointed by him who inadvertently forgot to file the application does not find support from the records. What is clear is that the appellant has been grossly negligent in pursuing the matter before the trial court. Thus, the trial court, the revisional court as well as the High Court, were correct in dismissing the belated claim of the appellant. We find no reason to interfere with the impugned order dated 19.05.2022 of the High Court of Judicature at Allahabad.

The appeal stands dismissed."

11. This Court has to see the sufficient 'explanation' for condonation of delay and not the 'excuses' for condoning the delay as held by the Hon'ble Supreme Court in the case of ***Sheo Raj Singh & Others Vs. Union of India and Another; (2023) 10 SCC 531***. The relevant paragraphs 31 and 32 are extracted here-in-below:-

"31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an "explanation" and an "excuse". An "explanation" is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an "explanation" from an "excuse". Although people tend to see "explanation" and "excuse" as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An "excuse" is often offered by a person to deny responsibility and

consequences when under attack. It is sort of a defensive action. Calling something as just an "excuse" would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

12. The judgments relied by learned counsel for the appellant are of no assistance to his case. In the case of ***State of Jharkhand and others versus Ashok Kumar Chokhani and others(supra)***, the Hon'ble Supreme Court found that the delay was explained by the concerned respondents therein but without considering the same, the application was dismissed by the High Court. In the case of ***State of J & K and others versus Mohammad Maqbool Sofi and others(supra)***, the Hon'ble Supreme Court has held that the High Court could not have considered the merit of the case while deciding the application for condonation of delay.

13. The Hon'ble Supreme Court, in the case ***Pathapati Subba Reddy(Died) by L.Rs & Ors. versus The Special Deputy Collector(LA)(supra)***, has held that the Courts are empowered to exercise discretion to condone the delay if sufficient cause has been explained but the 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. It has also been held that 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.

14. The present case is not only a case in which the appellants are negligent but they were also not diligent in pursuing the matter. The affidavit also indicates that it has been prepared to fill in the dates as per convenience to explain the delay, therefore the explanation for delay is also not bonafide and does not seem to be correct as discussed above.

15. The appeal has been filed on misconceived and baseless grounds and without explanation for the aforesaid period, what to say of the sufficient cause, which may have prevented it from filing the appeal. There is also no explanation after 30.05.2023. Therefore the application is liable to be dismissed.

16. The application for condonation of delay (C.M. Application No.1 of 2023) is **dismissed**. Consequently, the appeal is **dismissed**.

Order Date :- 13.11.2024

Akanksha Sri.