

Neutral Citation No. - 2024:AHC-LKO:84794

Court No. - 4

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 609 of 2019

Appellant :- Maheep Kumar Gupta

Respondent :- Icici Lombard Motor Insurance Co. Ltd. Thru B.M. And Ors.

Counsel for Appellant :- Rajendra Jaiswal

Counsel for Respondent :- Brijendra Chaudhary, Ved Prakash Verma

Hon'ble Rajnish Kumar,J.

I.A. 8 of 2024

Heard.

This is an application for deleting the name of the respondent no. 4, who was minor and had died, and her legal heirs are already on record.

No objection to the application has been filed.

On due consideration, the application is **allowed**.

Let the necessary incorporation be made during course of the day.

Learned counsel for the appellant insists that the application for condonation of delay may be heard today itself.

C.M. Application No.137900 of 2019

1. Heard.

2. Office has reported a delay of 2099 days in filing the appeal.

3. Learned counsel for the appellant submits that the appellant could not appear, therefore the ex-parte judgment and award was passed by the tribunal against the appellant. On coming to know about the ex-parte judgment and award, the appellant filed an application for recall under Order 9 Rule 13 of Civil Procedure Code. The same was allowed on a cost of Rs. 1,000/- but the same could not be deposited on account of strike of lawyers, therefore, the written statement, which was filed along with the application for recall, could not be considered and now the appellant is ready to deposit the said cost and any further cost, which may be imposed by this Court, and the application may be allowed as there is no deliberate or intentional delay in filing the appeal.

4. Per contra, learned counsel for the respondents submits that the appellant had deliberately not appeared in the proceedings and appeared only after the publication was made by the tribunal. Thereafter, again he disappeared because the driver of the vehicle, who is the appellant himself, had no driving license. After the ex-parte judgment and award was passed by the tribunal against the appellant, he filed an application for recall of the order, which was allowed on a cost of Rs. 1,000/- but same was not deposited and repeatedly applications were moved just to delay the proceedings and adding harassment to the claimant-respondents, which were rightly rejected by the tribunal. Thus, the delay in filing the appeal is not liable to be condoned and the application is misconceived and liable to be dismissed.

5. Having considered the submissions of learned counsel for the parties, I have perused the records and the affidavit filed in support of the application for condonation of delay.

6. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (here in after referred to as "MVAct) claiming compensation on 09.08.2011. The appellant appeared on 17.03.2012, but he did not file any written statement and disappeared, therefore, the case proceeded ex-parte and the claim petition was allowed by means of the judgment and award dated 22.09.2012. The appellant moved an application for recall of the said order on 31.01.2013, which was allowed on a cost of Rs. 1,000/- but he did not deposit the same. He filed an application on 14.02.2013 for waiving of the cost of Rs. 1,000/- or reducing it. Therefore, the contention of learned counsel for the appellant that he could not deposit the cost on account of strike of lawyers is misconceived and not tenable. The said plea has also not been taken in the affidavit filed in support of the application for condonation of delay. Even otherwise the strike of lawyers could not have been a ground because the cost was to be deposited in the office. The said application dated 14.02.2013 was rejected.

7. The appellant moved another application on 07.05.2013 for waiving of the cost or reducing it. The tribunal found that an application with same prayer has already been rejected, therefore there was no need of considering the same. However, the appellant was directed to deposit the cost within three days and produce the receipt in the court and only in that condition, his written statement could be taken on record.

8. The appellant moved another application on 10.05.2013 for recall of order dated 14.02.2013 and for reducing the cost of Rs. 1000/-. Then, the tribunal found that the appellant has not deposited the cost, therefore, the application was rejected by the presiding officer of the tribunal and an order was also passed that since the appellant has not deposited the cost, therefore, the order of proceeding ex-parte would continue. Thereafter, on 20.05.2013, the issues were framed by the tribunal and after evidence, the claim petition was decided by means of the impugned judgment and award dated 19.11.2013 awarding compensation of Rs. 2,72,000 along with interest at the rate of 6% per annum from the date of filing of the claim petition.

9. The appellant, on coming to know about the judgment and award dated 19.11.2013, produced the tender in three copies for depositing the cost of Rs. 1,000/- on 19.11.2013. The presiding officer passed an order on it that the tender was presented after passing of the judgment with a request that tender has been presented for depositing the cost of Rs. 1000/- under the order dated 28.05.2013, but the court has become 'functious officio', therefore, there is no justification of passing order on the same. Even otherwise there was no order for deposit of Rs. 1000/- in the order dated 28.05.2013, therefore, the tender was wrongly and illegally submitted.

10. Perusal of the affidavit filed in support of the application for condonation of delay indicates that the grounds for condoning the delay in filing the appeal has been given in paragraphs no. 2 to 5, which are extracted hereinbelow:-

"2- That against ex-parte order dated 19-11-2013 the appellant and appellant's counsel approached before Hon'ble Tribunal and filed Misc.

Case No.216/2011 which was allowed on 30.09.2013 with Rs. 1000/- caste but the appellant not deposit the same in time so the Misc. Case was rejected so appellant also filed the another Misc. Case No. 103/2013 which was rejected on 24.07.2019.

3- That the owner of vehicle clearly said before the Tribunal that his vehicle was not involved in the incident which was not considered by the Learned Tribunal and the learned Tribunal arbitrary passed ex-parte order against the appellant and not given the full opportunity to the appellant to pursue his case.

4- That the appellant's father was heart patient and his treatment was going on and due to his treatment the applicant does not file the F.A.F.O yet.

5. That the appellant approached the counsel on 20.11.2019 to the Rajendra Jaiswal after his suggestion he filed the F.A.F.O. before this Hon'ble Court against the ex-parte order dated and awarded 19.11.2013 and against the ex-parte order dated and awarded 19.11.2013 the deponent has filed Misc. Case No. 103/2013 before Additional District Judge /M.A.C.T. Court No.1, Faizabad which was rejected on 24.07.2019. The copy of order is filed herewith as Annexure No. 1 to this affidavit and also filed the his D.L.. herewith as Annexure No. 2 to this affidavit."

11. The aforesaid paragraphs indicate that the contention of learned counsel for the appellant that the cost could not be deposited on account of strike of lawyers has not been taken, therefore, it is misconceived and beyond pleadings, therefore not tenable. The ground taken is that the vehicle of the appellant was not involved in the accident but that cannot be considered, while considering the application for condonation of delay. The another ground for delay in filing the appeal is ailment of the father of the appellant, which is not supported by any material and advise of the counsel for filing the appeal, which can not be a ground for condoning the delay. Even otherwise such a long delay can not be condoned on the grounds taken in the facts and circumstances of the case and conduct of the appellant.

12. In view of above, the appellant has failed to give any sufficient ground for condonation of delay in filing the appeal, rather excuses have been given, whereas the delay in filing the appeal can be condoned and the appeal may be

entertained after the expiry of the period of 90 days provided for filing the appeal under Section 173 of MVAct if the Court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. The appellant has failed to show even a single sufficient cause, which may have prevented him from filing the appeal in time. It is apparent that the appellant himself was trying to delay the proceedings of the tribunal by moving repeated similar applications, even after rejection and has also not complied the order and deposited the cost, when the application was allowed. Therefore, it cannot be said that the delay in filing the appeal is bonafide and not intentional or deliberate. It appears that since the appellant had no license on the date of accident, therefore, he was trying to delay the proceedings by moving repeated similar application, which is misuse of process of court.

13. This Court has to see as to whether the grounds taken by appellant 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 discussed above the appellant has not given the sufficient ground for condonation of delay. Only the excuses have been given, which are not sufficient to condone the delay of such a long period.

14. 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."

15. 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."

16. The learned tribunal has recorded in the impugned judgment and award that the appellant himself was the driver of the vehicle and he had license with effect from 16.07.2011 to 18.01.2012, whereas the accident had occurred on 08.06.2011, therefore, he had no driving license on the date of accident. No contrary material could be shown before this Court also. Thus, the liability has rightly been fixed on the appellant and it may be the reason for delaying the proceedings on one or the other ground and before this Court also the counsel for the appellant stated that the appellant is ready to deposit not only the cost of Rs. 1,000/- but further cost, which may be imposed by this Court, but award of cost can not be the only criteria for condonation of delay, if the grounds are otherwise not sufficient.

17. In view of above, the application for condonation of delay is misconceived and baseless. The appellant has failed to show even a single sufficient cause for condonation of delay of such a long period, therefore the application is liable to be dismissed. The application for condonation of delay is **dismissed**. Consequently, the appeal is dismissed. No order as to costs.

18. The amount of statutory deposit made by the appellant before this Court shall be remitted to the concerned tribunal for adjustment in compensation to be paid to the claimant-respondents under the impugned judgment and award dated 19.11.2013 passed in Claim Petition No. 216 of 2011; Ram Suresh @ Suresh Kumar and others vs. Maheep Kumar Gupta and another by Motor Accident Claims Tribunal/Additional District Judge, Court No. 1, Faizabad now Ayodhya forthwith and in any case, within four weeks from today.

Order Date :- 10.12.2024/Raj