

INTHE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(1093/2022) IN Mac App 1/2022

UNION TERRITORY OF J AND K AND ORS.

...Appellant(s)/Petitioner(s)

Through: Mr. Jahingeer A Dar, GA

Vs.

RUKAYA JAN AND ORS.

...Respondent(s)

Through: Mr. Waqar Ul Zaman, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
05.03.2025

1. There is a delay of 547 days, in filing the appeal, which is being sought to be condoned on the grounds stated in the application in hand.
2. Objections have not been filed. However, learned counsel for respondents has made an oral submission objecting instant application by stating that no sufficient ground has been made out in the application which would warrant extension of time in filing the appeal by condoning the delay.
3. Learned counsel for the applicants/appellants submits that applicants, in order to succeed in their application, have given cogent and sufficient grounds therein for condoning delay.
4. I have heard learned counsel for parties and perused the record on file.
5. Award has been passed by Motor Accident Claims Tribunal, Srinagar ("*Tribunal*" for short) on 11.09.2020. The said award has been passed in File No. 59/2007.
6. The award has been passed in favour of the claimants/respondents on account of death of Nazir Ahmed Rather S/o Gh. Mohd Rather, who was driving the vehicle bearing registration No.JK02AA/4796, from Srinagar towards Jammu and on reaching at Sher Bibi on the Srinagar-

Jammu NHW at around 15:30 hours, driver of offending vehicle lost control over his vehicle and met with an accident, resulting in death of, at least, two persons on the spot, which included driver of offending vehicle and critically injuring the respondent herein.

7. Respondent claimed compensation on account of injury suffered by her in road traffic accident which took place because of rash and negligent driving by driver of offending vehicle bearing registration No.JK02AA/4796.
8. During the proceedings of the trial of the claim petition, counsel for applicants/appellants herein had been present inasmuch as his presence is also recorded in the award. The said award on being passed on 11.09.2020 was forwarded to the applicants/appellants on 17.09.2020.
9. It is not the case, where one can say that applicants/appellants were not being represented before the Tribunal or that copy of award was not forwarded to them immediately after its passing whereas fact of the matter is that it was forwarded to them on 17.09.2020. Extension of time by condoning the delay is being sought by the applicants on the ground that they received the sanction from the Department of Law Justice and Parliamentary Affairs for filing appeal on 03.01.2022.
10. Para 01 of the application seeking condonation of delay is worthwhile to be reproduced as under:

“...That as soon as the appellants got the knowledge of the award steps to implement same were set in motion. However, on examining of the award and upon perusal of record, it was decided to avail remedy of appeal and accordingly, the matter was taken up with the higher authorities in the appellant police department from where it was referred to the Administrative Department of Law, Justice and Parliamentary Affairs for opinion/sanction to the filing of appeal and after examining the matter in its entirety, the Department of Law, Justice and Parliamentary Affairs have accorded sanction to the filing of appeal vide No. Law-Lit5/580/2021/10 dated 03.01.2022, copy of which is annexed with the main appeal. After receiving the sanction through the Home Department, the appellant herein furnished record of the case and certified copy of the award to the Ld. AAG for filing of the appeal. It is submitted, that in the said process, as in obvious time required got consumed, as such the delay caused in filing of the appeal is neither willful nor intentional, but for the reasons mentioned above, which were beyond control. It is submitted that the appellant department has always been pursuing the matter vigorously and at no point of time has there been any laxity in following the matter. Therefore, the delay caused in processing the

matter at the appellant level, at the PHQ level and thereafter in the Administrative Department as well as in the Department of Law, Justice and Parliamentary Affairs is condonable.”

11.Nothing is stated in the application to indicate as to when the award was passed and when copy of the same was forwarded to applicants/appellants and when they had approached the Department of Law Justice and Parliamentary Affairs for sanction. Not a whisper about such important dates and facts is palpably apparent from application, though applicants have submitted in the application that as soon as they got knowledge of the award steps for implementation of the same was set in motion.

12.If a litigant applies to condone delay in filing appeal/petition, he/she is required to explain why appeal/petition was not filed within limitation period itself. An explanation of delay from the period when limitation ended is not sufficient. The litigant is required to explain why appeal/petition was not filed before the expiry of limitation period. The Supreme Court in one of its judgements dated 29th November 2024, passed by it in *Special Leave Petition (C) Diary no.48636 of 2024* titled as ***State of Madhya Pradesh v. Ramkumar Choudhary, 2024 INSC 932 : 2024 Live Law (SC) 953***, has made certain observations while dismissing a petition seeking to condone delay of over five years in filing an appeal. Appropriate portion of the said judgement is worthwhile to be reproduced hereunder:

“4. Evidently, there was enormous delay occurred at every stage i.e., from the date of receipt of the judgment passed by the First Appellate Court to till the date of filing the second appeal by the State. The judgement was passed by the First Appellate Court on 21.08.2014 and the same was communicated by the Government Advocate representing the State to the Collector, only on 25.08.2015 i.e., after a delay of one year. Causing 3 months’ delay, by letter dated 10.12.2015, the Collector informed to the Principal Secretary, Revenue Department, about the passing of the judgment against the State and preferring a second appeal against the same. Thereafter, the Law Department took three years’ time and gave permission for filing appeal on 26.10.2018, which was sent to the Collector on 31.10.2018. Based on the said opinion, after preparation of the appeal papers, the State filed the second appeal only on 18.10.2019.

Hence, there was inordinate delay of 1788 days occasioned in preferring the second appeal, but the same was not properly explained by the State.

5. The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In *Majji Sannemma v. Reddy Sridevi*, 2021 SCC Online SC 1260, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in *Ajay Dabra v. Pyare Ram*, 2023 SCC Online SC 92, wherein, it was held as follows:

“13. This Court in the case of *Basawaraj v. Special Land Acquisition Officer* [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.”

13. Delay should not be excused as a matter of generosity, has been said by the Supreme Court in *Union of India v. Jahangir Byramji Jeejeeboy (D) through his legal heir*, 2024 SCC OnLine SC 489. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning inordinate delay. If litigant chooses to approach the court long after lapse of time prescribed under relevant

provisions of law, then he cannot turnaround and say that no prejudice would be cause to either side by delay being condoned. The length of delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. While considering the plea for condoning delay, the court must not start with merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by party seeking condonation. It is only if sufficient cause assigned by litigant and the opposition of other-side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay. The question of limitation is not merely a technical consideration. The rules of limitation are based on principles of sound public policy and principles of equity. The Supreme Court in plethora of cases has said that delay should not be condoned as a matter of generosity.

14. Tendency of the State to file appeal, revision or SLP with huge delay without reasonable explanation has been deprecated by the Supreme Court in the case of *Union of India v. Vishnu Aroma Pouching (P.) Ltd., (2022) 9 SCC 263*. Relevant paragraph of the judgment is worthwhile to be reproduced as under:

“3. The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]. The leeway which was given to the Government / public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors v. Living Media India Ltd. & Anr. - (2012) 3 SCC 563. Despite this, there seems to be a little change in the approach of the Government and public authorities.”

15.A *Special Leave Petition (Civil) Diary Nos. 2574/2020* titled as ***State of Uttar Pradesh and others v. Sabha Narain and others***, reported in (2022) 9 SCC 266, was filed with delay of 502 days with an explanation given in the application for condonation of delay. The Supreme Court has said that it gives only a saga of moving of file from one place to the other and that too with long interludes. The Supreme Court also said that in fact, other than lethargy and incompetence of petitioner, there is nothing plausible which has been put on record and that the Supreme Court has repeatedly discouraged the State Governments and public authorities in adopting an approach that they can walk to the Court as and when they please ignoring the period of limitation prescribed by the Statutes as if the Limitation Statute does not apply to them. Looking to the period of delay and casual manner in which the application had been worded, the Supreme Court imposed costs on the petitioner for wastage of judicial time. The abovementioned judgement and law laid down therein by the Supreme Court is also applicable to the case in hand.

16.In view of above, this application is **dismissed** being without any merit, resulting in dismissal of the appeal as well. Interim direction, if any, shall stand vacated.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
05.03.2025
“Imtiyaz”