

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2015

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(PD) No.762 of 2014
& M.P.No.1 of 2014

The Union of India
Owning Southern Railway,
Park Town,
Madras-600 003

rep. By its the General Manager : Petitioner

Vs

Smt.Konduru Pedda Appamma : Respondent

Prayer : Civil Revision Petition filed under section 227 of the Constitution of India, against the order, dated 04.12.2013 in I.A.No.59 of 2013 in Dy.No.313 of 2013 now numbered as OA(ii-U)361 of 2013 passed by the Railway Claims Tribunal, Madras Bench.

For Petitioners : Shri.J.Harikrishna

For Respondent : Mr.T.Rajamohan

ORDER

This revision arises out of the order passed by the Railway Claims Tribunal, Madras Bench in I.A.No.59 of 2013 in Dy. No.313 of 2013, dated 04.12.2013.

2.The respondent filed the application I.A.No.59 of 2013 to condone the delay of 2150 days in filling a claim petition, claiming compensation for the death of her son in a railway accident on 23.11.2006.

3.The respondent has averred in the application filed in support of the petition that she is a permanent resident of Andhra Pradesh, she is a widow and she does not have any support and due to untimely death of her son, she was mentally upset and hence, she could not file the claim petition in time. It is further averred that she was able to get the Death Certificate from the concerned authorities only on 24.02.2012 and she obtained a legal heirship certificate from the Tahsildhar, Srikakulam District of Andhra Pradesh on 08.08.2013 and the police records on 11.08.2013.

4.The application was resisted by the petitioner contending that

each and every days delay was not properly explained and she did not furnish sufficient grounds to condone the inordinate delay and by efflux of time, the authorities would destroy the relevant records.

5.The tribunal, having satisfied with the reasons assigned in the affidavit and following the orders passed by this court in CMA No.2347 of 2009, dated 15.06..2012, allowed the application. Challenging the order, the present revision is filed.

6.Heard Mr.Sri J.Harikrishna, learned counsel for the petitioner and Mr.T.Rajamohan, learned counsel for the respondent.

7.The learned counsel for the petitioner submitted that the respondent has not explained the delay; that the tribunal over-looked the conduct of the respondent and allowed the application, which is quite arbitrary and unjustifiable. It is further submitted that the respondent failed to explain the each and every days delay in a proper and prospective manner and by documentary evidence.

8.The learned counsel has relied upon the following judgments in support of his contention:-

1.(2011)3 LW 26 in the case of Lanka

Venkateswarlu (D) by Lrs vs. State of A.P and others;

2.2012-1-TLNJ 1 (Civil) in the case of D.Soundararaj vs. K.Ashok

3.2012-2-L.W.44 in the case of K.Munusami & another vs. Govindaraj and another.

9.It is seen that the respondent has filed the application categorically stating that she belongs to the State of Andhra Pradesh, she is a widow and she does not have support and the Death Certificate was obtained after six years and the claim petition was filed within a month from the date of receipt of Legal-heir ship Certificate. The tribunal, relying upon the judgment passed in CMA No.2347 of 2009, dated 15.06.2012, condoned the delay. In the above said judgment, this court has condoned the delay of 2136 days, observing that the Courts have to adopt liberal and pragmatic approach and that the earlier approach of the courts, expecting the explanation for every and every days delay is changed and in appropriate cases, the courts have considered even poverty and illiteracy as sufficient grounds to condone the delay and the refusal to condone the delay should not result in closing the doors of justice to real seekers of justice and the meritorious case should not be denied

adjudication on account of technical plea or procedural wrangles.

10. In the judgment reported in **2011-3-LW 26 in the case of Lanka Venkateswarlu (D) by Lrs vs. State of A.P. and others**, the Hon'ble Apex Court has held as follows:-

"26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", Justice oriented approach", substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this court in a number of cases. Whilst considering

applications for condonation of delay under section 5 of the Limitation Act, the Court do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims of fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers."

11.The same view was followed by this court in the judgments relied on by the learned counsel for the petitioner. However, in this case, the respondent has explained the delay in filing the claim petition and the tribunal, while exercising its discretionary jurisdiction, has condoned the delay. Therefore, I am of the considered view that the judgments cited by the counsel for the petitioner have no bearing on the facts of this case.

12.It is settled law that discretion exercised by the trial court for condoning the delay will not be interfered with by the appellate courts/revisonal courts, unless the order is perverse and arbitrary.

13.In view of the above facts, I do not find any merit in this revision. Hence, the revision fails and the same is dismissed. No

costs. Consequently, connected Miscellaneous Petition is closed.

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K.KALYANASUNDARAM,J

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