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HIGH COURT OF DELHI AT NEW DELHI

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Mac. Appeal No.191/2014

Decided on : 3rd July, 2015

SHAKIL AHMAD VARSHNEY Appellant
Through: Mr. Sanjeev Srivastava, Advocate.

Versus

DR. ALOK VARSHNEY & ANR. Respondents
Through: Mr. Manish Kaushik, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

C.M. No.3932/2014 (for delay)

1. This is an application filed by the appellant under Section 5 of the Limitation Act seeking condonation of 116 days delay in filing the appeal.

2. The appellant has been awarded an amount of Rs.2,53,848/- along with interest @ 7.5 per cent per annum from the date of filing of the claim petition which is 17.11.2007 till its realization by the Motor Accident Claims Tribunal. As per Section 173 (1) of the Motor Vehicles Act, 1988, the appeal against the accident claim has to be filed within a period of 90 days from the date of the award. The appellant has filed the

appeal with delay of 116 days. The reasons for delay as explained in the application are as under :-

- “2. *That the appellant was not present in Delhi due to some work and he could not contact his counsel to prepare and file the appeal before the Hon’ble Court. The appellant came to Delhi in the last week of November, 2013 and after his arrival, he immediately contacted with his counsel to prepare and file the appeal before this Hon’ble Court.*
3. *That as soon as the appellant contacted, his counsel immediately drafted the appeal.”*

3. Section 5 of the Limitation Act lays down that before the delay is condoned, the applicant must be able to show to the court that it was prevented by ‘sufficient cause’ from filing the appeal. The ‘sufficient cause’ has been interpreted as a cause by the courts which is beyond human control. While interpreting the word ‘sufficient cause’, the Apex Court has laid down in catena of authorities that the length of the delay is not material but the *bona fides* of the person in prosecuting the matter are to be seen which is laid down in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*; (2013) 12 SCC 649.

4. In the instant case, though the length of delay is not very long; however, the *bona fides* of the appellant in prosecuting the matter are suspect. It seems that the appellant, in the first instance, has accepted the award of the Motor Accident Claims Tribunal and it belatedly dawned on him that he ought to file appeal where the appellate court may enhance the award amount. This is the reason why the explanation which is

furnished by the appellant does not inspire any confidence about its genuineness. He simply states in the application that he was not present in Delhi without disclosing where had he gone, on what date did he go, when did he come back, what is the date when he contacted the counsel and what prevented him from telephonically contacting his counsel so as to request him to file an appeal. The submission made in the application is not even using the word 'sufficient cause' or showing that there was something which was beyond his control which prevented him from filing the appeal. The application which has been drafted is in a most casual and routine manner assuming that the delay will be condoned as a matter of right. This cannot be permitted to be done especially in the light of the fact that the courts are reeling under heavy pendency.

5. I feel that the application seeking condonation of delay is bereft of any genuine reason and accordingly, the same does not deserve to be allowed. The application is dismissed.

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Since the application seeking condonation of delay itself is dismissed, therefore, the appeal is barred by time and hence dismissed.

V.K. SHALI, J.

JULY 03, 2015
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