

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 594 OF 2015

Mr. Prasad Tilve,
Proprietor of M/s. Hotel Prasad

..... Applicant

V e r s u s

Regional Director,
Employees State Insurance Corporation

..... Respondent

Mr. Vijay Palekar, Advocate for the Applicant.

Ms. Aditi Kamat, Advocate for the Respondent.

Coram :- **C. V. BHADANG, J**

Date : **17th March, 2016**

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This is an application for condonation of delay in filing an Appeal under Section 82 of the Employees State Insurance Act, 1948, ('ESI Act' for short).

2. The Applicant had approached the ESI Court under Section 75 read with Section 77 of the ESI Act for a declaration that the establishment of the Applicant is not governed by the provisions of the ESI Act. It appears that the learned ESI Court by Judgment and Order dated 03.08.2013, dismissed the application.

3. The case made out in the application for condonation of delay is that after the evidence of the Applicant was recorded before the ESI Court, he was

informed by the concerned Counsel that his presence is not necessary and he would be informed about the progress of the case. It is further contended that after the application was dismissed by the learned ESI Court, the Counsel appearing for the Applicant informed his Junior to send a communication to the Applicant informing about the dismissal of the application. This was on account of the fact that the Counsel had lost the contact numbers stored in his mobile,

4. It appears that, after the impugned Judgment and Order was passed on 03.08.2013, a certified copy was applied for on 07.08.2013. The copy was ready for delivery on 31.10.2013 and was actually received by the Advocate on 07.11.2013.

5. According to the Applicant, after waiting for sometime, he himself contacted the Counsel on 24.01.2015. He was informed about the dismissal of the application and the need for challenge. Thereafter, within three days, i.e. 27.01.2015, the Appeal came to be filed. The office raised an objection about the Appeal being barred by time when the application for condonation of delay was filed on 03.07.2015. It is contended that this, has resulted into a delay of about 448 days. The application is supported by an affidavit of Advocate Laxmikant V. Palekar.

6.. The Respondent has filed a reply opposing the application. It is contended that there is a substantial delay in filing the Appeal. It is also contended that the quantum of delay is not correctly calculated and the delay is in fact of 697

days. It is submitted that the delay is not properly explained. The conduct of the Applicant shows absence of diligence in ascertaining the status of the case and the ground of the lapse on the part of the Counsel, is not sufficient for condoning the delay. Learned Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*** passed in ***Civil Appeal nos. 8183-8184 of 2013***, in order to submit that in terms of the principles laid down by the Hon'ble Supreme Court, no case for condonation of delay is made out.

7. I have heard the learned Counsel appearing for the parties and perused the record.

8. It is true that the delay in the present case cannot be said to be of a short duration or of a few days. The Hon'ble Apex Court in the case of ***Esha Bhattacharjee*** (supra) after taking a survey of the relevant decisions holding the field, has culled out the principles while considering the application for condonation of delay. It would be apposite to re-produce the principles as set out in Paras 15 and 16 as under :

"15. From the aforesaid authorities the principles that can broadly be culled out are:

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.

- 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.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- 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.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- 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.
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- 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.
- 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.

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.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of

judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters. “

9. It can thus be seen that in terms of the principles laid down, it has been held that normally there should be liberal, pragmatic, justice-oriented and non-pedantic approach while dealing with an application for condonation of delay as the Courts are not supposed to legalise injustice but are obliged to remove the same. It is in the context of this that the term 'Sufficient cause' has to be understood, in the facts and circumstances of each case. No presumption can be attached to deliberate causation of delay. This is because a party does not stand to gain by approaching the Court late. In a given case, lack of bonafides would be a significant and relevant factor.

10. In the present case, it appears that the certified copy was applied promptly and in terms of the case made out in the application, after the Applicant contacted his Counsel on 24.01.2015, the Appeal came to be filed within a period of three days i.e. 27.01.2015. The delay for the period, in the interregnum, is tried to be explained on the ground of the Counsel losing the contact number and the lapse on the part of the Junior who failed to intimate about the decision to the Applicant. The application is supported by the affidavit of the concerned Advocate.

Normally, the Applicant cannot be made to suffer for the lapse on the part of the Counsel. The case made out in the application would show that the Applicant contacted the Counsel and after learning about the dismissal of the application, the Appeal came to be filed within a short time. It would be further significant to note that it was the Applicant who had approached the Court on a declaration under Section 75 read with Section 77 of the ESI Act. Thus, no deliberate intention to delay the challenge to the dismissal of the application can be assumed against the Applicant. Taking an overall view of the matter, I find that although the delay cannot be said to be of a short duration, in the given circumstances, the Applicant has made a sufficient cause for condoning the same.

11. In the result, the application is allowed. The delay in filing the Appeal is hereby condoned. Let the Appeal be registered.

C. V. BHADANG, J.

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