

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 589 OF 2016

IN

STAMP NUMBER MAIN NO. 2219 OF 2016

SHRI. DEVENDRA NAIK AND 2 ORS.

... Applicant

Versus

MR. OSWALD CALDEIRA, REP. BY SMT.
CLARA EUGENIA CALDEIRA.

... Respondent

Shri A. R. S. Netravalkar, Advocate for the applicants.
Shri Milton Marshall, Advocate for the respondent no.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 29th September, 2016

P.C.

Heard Shri A. R. Netravalkar, learned Advocate for the applicant and Shri M. Marshal, learned Advocate for the respondent.

2. Shri Netravalkar, learned Advocate for the applicant contended that though the award was passed by the learned MACT on 17.12.2015 a certified copy thereof was obtained by their Advocate on record sometime in the 3rd week of January, 2016 and thereafter the file was processed by the Panaji Divisional Office which forwarded the said judgment and award to their Regional Office at Mumbai under letter dated 1.2.2016 for further course of action since the judgment and award passed by the MACT was beyond the powers and authority of the applicant Divisional Officer, Panaji. It was also his contention that thereafter the matter was processed for

their legal opinion when the file was marked before the Regional Office Claim Committee and where the matter was again processed and finalised. In the meantime, the Regional Officer forwarded the file after processing to the Panaji Divisional Office on 6.6.2016 recommending to prefer an appeal before the appropriate Court.

3. The Panaji Divisional Officer thereafter forwarded a copy of the judgment and award to their Advocate at Panaji to prepare the necessary appeal and only thereafter on finalisation of the appeal, was it filed in this Court on 8.7.2016 thereby resulting in a delay of 100 days in filing the appeal. The long and short of the application was that on account of the administrative exigencies the applicants took time to finalise the matter as the Regional office was vested with the financial powers and authority to decide the fate of the appeal and also time was consumed in transit of the documents. The delay in filing the appeal was not intentional but for the reasons enumerated in the application. The learned Counsel further submitted that the delay had to be condoned and appeal had to be registered and decided on merits.

4. Shri A. Netralvalkar, learned Counsel appearing for the applicants placed reliance in the State of West Bengal Vs. The Administrator, Howrah Municipality and others [AIR 1972 SC 749]. The Hon'ble Apex Court dealt with the expression "sufficient cause" held that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence for inaction nor want of bonafide is imputable to a party. Besides, it

cannot be construed too liberally merely because the party in default is government. He also relied in Mannu Ram and another Vs Additional District Judge, Ballia[1999 ACJ 10350] which considered the judgment of the Apex Court in Collector, Land Acquisition, Anantnag Vs. Katiji[AIR 1987 SC 1353] wherein it was held that each day's delay was not the requirement, but there must be substantial explanation for the delay.

5. Shri M. Marshal, vehemently resisted the application primarily on the ground that the applicant had adopted a cavalier attitude in processing their papers and that the delay which was occasioned was on account of the conduct of the applicants and could not be considered and the application had to be dismissed. On his part he placed reliance in New India Assurance Co. Ltd Vs Md. Abdul Latif and another [2015(2)TAC 379 (Gau)] where it was categorically held that the cavalier attitude of the insurance company in processing the papers did not justify the insurance company in seeking the condonation of delay and the application was therefore liable for rejection on that count. He further placed reliance in Divisional Manager, Oriental Insurance Co. Ltd. Vs Sumitra Sahoo and others,[2014(3) TAC 111(Ori.)]where it was held that a delay of 155 days was neither explained nor any sufficient cause shown for such delay. Quite on the contrary a contention raised with regard to the merits of case explaining sufficient cause for preparing the appeal was not justified. The nature of the reason as specified in the affidavit for the condonation of delay did not answer the expression "sufficient

cause" within the meaning of Section 5 of the Limitation Act, the application was thus liable for dismissal and the appeal also dismissed being barred by time.

6. Shri M. Marshal, learned Advocate further relied in Government of A.P. Vs Bactchala Balaiah, [91984]0 Supreme (AP) 234] where the Hon'ble Apex Court had decided to condone the delay in presenting the I.A. in the proceedings under the Arbitration Act, 1940 and that in Ramalal Vs Rewa Coal Fields Ltd, [AIR 1962 Sc 361] which held that even a day's delay had to be explained. Shri Marshal, learned Counsel lastly placed reliance in Balwant Singh(dead) Vs Jagdish Singh and others, [(2010) 8 SCC 685] which gave interpretation "sufficient cause" contained in Section 5 of the Limitation Act, 1963, while dealing with the application for setting aside the abatement of the suit and the condonation of delay in bringing the legal representatives on record. Their Lordships of the Apex Court held that a liberal construction of the expression "sufficient cause" was intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bonafide is imputable. The expression "sufficient cause" implies the presence of legal and adequate reasons. At the same time it was reiterated that it was difficult to set out a strait jacket formula which can be ultimately applied to all the cases without prejudice to the facts and circumstances of the given case.

7. Coming back to the facts of the case, the applicants who are

original insurers had clearly set out in their application that though the certified copy of the judgment and the award had been obtained sometime in the 3rd week of January, 2016, the same had to be forwarded to their Regional Office Mumbai and forwarded the said judgment and award to their Regional Office at Mumbai under the letter dated 1.2.2016 for a further course of action since the judgment and award passed by the MACT was beyond the powers and authority of the applicants' Divisional Officer, Panaji. They had otherwise accounted for the delay that they had obtained legal opinion from the advocate on record and after the file was referred to the Regional Office, it was again forwarded to the Panaji Development Office on 1.6.2016 to prefer an appeal against the impugned judgment and award. It is also apparent and borne out from the application that the applicants had contacted the local advocate and impressed upon him to prefer an appeal and accordingly after settling the appeal had ultimately come to be filed.

8. In sum and substance it is apparent that the delay in filing the appeal was not caused on account of any negligence or inaction on the part of the applicants but due to the procedural and administrative exigencies which were beyond their control. In any event the cause of justice was required to be furthered rather than taking a pedantic view to decide a meritorious case.

9. In any event, the applicants would have to shoulder the burden of settling the amount under the award and considering the application from that perspective too, the applicants would be

justified in assailing the corrections of the finding rendered by the learned MACT both on the rashness and negligence of the driver as also the execution of the award passed by the learned MACT. Thus taking a global overview of the matter and in the interest of justice, i find that the applicants have sufficiently accounted for the delay in preferring the appeal. It goes without saying that the delay is required to be condoned and it would be always available to the respondents to agitate their case in appeal on merits. The delay is therefore condoned. Registry is directed to register the appeal.

10. The application stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

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