

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 2914 of 2016
in
First Appeal No.14824 of 2016.

The Oriental insurance Co. Ltd., .. Appellant
-Versus-
Vshnu Pelad Rathod and another ..Respondents

Ms. Urmila K. Sanil for applicant. ...
Mr. Amol Gatne for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30th August 2016.

P.C.

1] This is an application for condonation of delay of about 5 years and 257 days in preferring the appeal challenging the judgment and award dated 9th March, 2010 passed by the Motor Accident Tribunal in MAC Petition No.4093/1994.

2] It is submitted by the learned counsel for the applicant the impugned judgment and award is passed exparte. When the applicant came to know about the same, the application for certified copy was made on 28th March, 2010, the same was ready on 4th June, 2010 and was received on 21st June, 2010. On receipt of the certified copy, the

applicant has preferred Misc. Application No. 1085/2010 praying inter alia, for setting aside the exparte judgment and award. The said application came to be rejected by the Tribunal by its order dated 1st July, 2011. Again an application for certified copy was made on 5th July, 2011, the same was ready on 28th July, 2011 and was delivered on 29th July, 2011.

3] According to the applicant, the papers of the appeal were collected by one Mr. Santosh Pimple on behalf of the applicant's Advocate. However, the papers were never delivered to the advocate because according to the applicant no such person was ever working in the office of the present Advocate. As a result thereof, no appeal was preferred. Only in or about January, 2016 when the Advocate for the original claimant visited the office of the applicant and requested for satisfaction of the decree, an inquiry was made and thereafter taking necessary instructions the appeal is filed along with this application for condonation of delay.

4] By way of additional affidavit it is submitted that the applicant Insurance Company had appointed Advocate Janet Godat (Sequiera). On 7th June, 2016 she has preferred written statement to the claim petition stating that cover note was not issued by the Insurance

Company. Thereafter, the Investigation Report was called for. In the meanwhile, the claim-petition came to be allowed on 9th March, 2010. It is submitted that though the Advocate Janet Godat (Sequiera) was appointed to file written statement, she could not do so and as a result thereof, the claim petition came to be decided exparte. For the reasons stated in the application, thereafter, papers for filing appeal were delivered to the said Santosh Pimple who is no longer working in the office of the said Advocate having taken up another job and therefore, the appeal could not be filed in time.

5] Learned counsel for the respondents-original claimants have strongly resisted this application for condonation of delay and in my considered opinion, rightly so. Here, the delay is not ordinary of a few days or so, but it is a 5 years and 257 days which is near about six years.

6] It is also pertinent to note that the original claim-petition was filed in the year 1994 and it came to be allowed in the year 2000. It was despite the fact that the applicant insurance company was duly served with the notice and as stated in the additional affidavit, Insurance Company had taken steps for filing written statement by calling for investigation report. It is further pertinent to note that immediately after the award was passed, an application for setting aside the exparte award

was made and the same came to be rejected on 1st of July, 2011. Even if the said period from the date of award till the rejection of application on 1st July, 2011 is excluded from consideration and allowance is made for the said period, even then, no explanation worth the name far remain from satisfactory, is offered for delay of 5 years. Merely alleging that the papers were given to one Santosh Pimple who was working in the office of advocate for applicant is not at all sufficient for this inordinate delay. Even affidavit of Santosh Pimple is also not filed.

7] The learned counsel for the applicant however submitted that the applicant being an Insurance Company some allowance is required to be made in so far as condonation of delay is concerned, by adopting liberal approach. In support of her submission, she has relied upon the judgment of Supreme Court in the case of Special Tehsildar Land Acquisition, Kerala -Vrs- K.V. Ayisumma, reported in (1996) 10 SCC

634 wherein the Supreme Court in Para 2 has observed as under :-

“It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day-to-day delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5

of the Limitation Act envisages explanation of the delay to the satisfaction of the court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic.”

8] The learned counsel for the applicant has further relied upon the decision of the Supreme Court in the case of **State of Haryana -Vrs- Chandra Mani and others reported in (1996) 3 SCC 132** wherein the Apex Court in paragraph 11 has observed as under :-

“It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court – be it by private party or the State are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note making, file pushing, and passing on the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table and keeping it on table for considerable time causing delay – intentional or otherwise – is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not

impermissible. If the appeals brought by the State are lost for such default no person is individually affected but with in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the government conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the cause is hopelessly without merit. No seperate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or given appropriate permission for settlement. In the event of decision to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is fit case for condonation of the delays."

9] It is true that as held in both these decisions, the applicant is seeking condonation of delay being Government Authority. It would be very difficult for the said authority to explain day-to-day delay. It is also true that when the applicant is a Government Authority the Court is expected to take note of impersonal machinery of the Government and it

is expected to take a liberal approach. However, when the delay is inordinate one, as held in the authority of *Oriental Aroma Chemicals Industries -Vrs- Gujarat Industrial Development* reported in (2010) 5 SCC 459 wherein the above said authority of *State of Haryana (supra)* is also cited, the Apex Court was pleased to hold that when the delay is of short duration then a liberal approach in condoning the same may be justified. However, if the delay is inordinate, a stricter approach is required to be adopted. It was further held in paragraph 16 that in dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasising that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay.

10] This position is also clarified by the Supreme Court in the case of *B.Madhuri Goud -Vrs- B. Damodar Reddy* reported in (2012) 12 SCC 693. In paragraph 9 and 10 it was pleased to hold that Law of Limitation may harshly affect a particular party but it has to be applied

with all its rigour when the statute so prescribes and the courts have not power to extend the period of limitation on equitable grounds.

11] While relying upon its own decision in *Maniben Devraj Shah -Vrs- Municipal Corporation of Brihan Mumbai* the Apex Court in Paragraph 10 has quoted as under :-

“23. What needs to be emphasised is that even though a liberable and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fide, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concerned or he is thoroughly negligent in prosecuting his cause, then, it would be a legitimate exercise of discretion not to condone the delay.”

12] The point, therefore, to be stressed is that merely because the applicant is a Government Authority it cannot seek the condonation of such delay by putting entire blame on the functioning of its own. Somewhat satisfactory explanation is required to be given for condoning such a long delay of about 5 years and more. Mere misplacing of the

documents by the office of the Advocate which was the ground raised for condonation of delay in the above referred authority of B.Madhuri Goud cannot be accepted as a sufficient cause as done by the Apex Court in the above said authority. Here, is the case where absolutely no cause worth the name is given by the applicant for condonation of this inordinate delay of almost six years, except for the time consumed in prosecution of the application before the Tribunal for setting aside the exparte judgment and award. The period of five years yet remains to be explained. Hence, even if a liberal approach is adopted having regard to the right which has now accrued in favour of the respondent, as a result of passing of the award in the year 2010, that too of the accident which has taken place in the year 1994 and in respect of which a small amount of compensation of Rs.1,21,000/- is granted, in my considered opinion this application does not deserve consideration. Therefore, its stands dismissed.

13] It is submitted by the learned counsel for the applicant that statutory amount of Rs.25,000/- deposited by the applicant in this Court be transferred to the Tribunal along with that accrued interest.

14] The Registry is directed to do the needful.

(Judge)