

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CM No.17251-52-CII of 2015 and
FAO No.5488 of 2015 (O&M)

Date of Decision: July 21, 2016

Reliance General Insurance Company Ltd., Chandigarh

...Appellant

Versus

Smt. Chhutni and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Sanjeev Kodan, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.17251-CII of 2015

Prayer in this application is for condonation of delay of 565 days in filing the present appeal.

It has been stated that initially the certified copy of the impugned award dated 30.10.2013 was misplaced in the office of the appellant-company. Thereafter the certified copy of the impugned order was again applied on 13.10.2014 and the same was received on 04.12.2014, which was sent to the head office of the applicant-appellant, which is situated in Mumbai, for deposit of the compensation amount along with interest as an execution application had been filed by the claimants. The said amount was deposited by cheque dated 04.06.2014. Thereafter the file was again sent to head office at Mumbai for taking approval for filing the appeal in the High Court. In the month of July, 2014, the file was received in the regional office at Chandigarh. An employee of the appellant put the brief in the decided matters and after searching the same, it was found in the month of May, 2015, leading to the filing of the present appeal on 17.07.2015 which have resulted in delay of 565 days in filing the present

It is the contention of learned counsel for the applicant-appellant that the appellant had immediately deposited the compensation amount on receipt of the sanction from the head office by cheque dated 04.07.2014 with the Commissioner, Rewari. There was no intention of delaying the matter any further as the sanction was also received from the head office in the month of July, 2014. The delay, if any, has occurred at the level of regional office which also was a mistake on the part of an employee of the appellant as he has placed the paper book in the decided matters which was traced in the month of May, 2015. He contends that the appellant would not have benefited in any manner because of delay in non-filing of the appeal and it was neither intentional nor deliberate on the part of the applicant-appellant. He, therefore, prays for condoning the delay in filing the present appeal.

I have considered the submissions made by learned counsel for the applicant-appellant but do not find myself in a position to accept the reasons which have been mentioned in the application for condonation of delay as referred to above.

Even if the delay which has occurred on the part of the employee of the appellant is accepted, there has not been any serious effort on behalf of the appellant to take immediate steps to file the appeal if it felt aggrieved by the award. The period prescribed for filing the appeal is 60 days which has to be counted from the date of receipt of certified copy as in the present case, the order was passed on 30.10.2013 and the certified copy was supplied on 04.12.2014. The period within which the appeal could have been filed would expire on 04.02.2015.

Another aspect also cannot be lost sight of i.e. what stopped the

head office in Mumbai to consider and take a decision to file the appeal when the case file along with copy of award was sent by the regional office to make deposit of the amount assessed as liability. The again sending of the file to the head office by the regional office for consideration for filing appeal further depicts the lethargy and negligence of the appellant.

Generally the delay has to be explained as far as possible from day to day, but even if a lenient view is taken in the present case, no details with regard to the movements of the file from one office to the other, has been given. Had there been a lapse on the part of the employee concerned, the details thereof should have been mentioned and the action taken thereon. It is difficult to believe that the appellant did not come to know of non-filing of the appeal, especially when it has been stated in the application that an execution application was filed by the respondents-claimants and in pursuance thereto, they had deposited the amount of compensation in July, 2014. All this shows the negligence on the part of the applicant-appellant in pursuing the matter. A litigant, who is not diligent and prompt in taking action as far as their claims and rights are concerned, cannot be given the benefit of their own wrong. Generally in the case of the departments of the Government, delay is said to be because of the impersonal attitude of the employee but that is not so in the case of the private companies as in the present case.

In the judgment passed in case titled as *Office of the Chief Post Master General & Ors. Versus Living Media India Ltd. & Anr., 2012 (2) S.C.T. 269*, the Supreme Court has deprecated such delays on the part of the government bodies or governments etc. in the following manner:-

“12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the

prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay”.

In view of the above, I do not find any reason to accept the prayer as made in the application for condonation of the inordinate and unexplained delay of 565 days in the filing the present appeal.

The present application is dismissed.

FAO No.5488 of 2015

In view of the dismissal of the application for condonation of delay, the present appeal is dismissed as barred by limitation.

In the light of the dismissal of the appeal, CM No.17252-CII of 2015 stands disposed of as infructuous.

July 21, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE