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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC.APP. 1014/2015**

SHANKAR

..... Appellant

Through: Mr. Kamal Mehta, Advocate

versus

RAMJEE LAL & ORS (THE ORIENTAL INSURANCE CO LTD)

..... Respondent

Through: Mr. Amit Gaur, Advocate for R-5

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

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04.01.2016

CM APPL.32178/2015 (delay)

1. This is an application seeking condonation of delay of 499 days in filing the appeal.

2. In the application it has been stated that the award in the instant case was passed on 07.05.2014 and the present appellant after service had engaged the services of a counsel who made him to file the written statement. It has been stated that after filing of the same, the appellant was informed by the counsel that he will keep the appellant posted about the matter and he need not come to the Court. Further, as and when his presence will be required, he will be duly intimated. It is only on 14.10.2015 the appellant claims that he learnt about the award having been passed against him when the police officials came to his house and attached his TSR.

Thereafter, the appellant appeared before the Presiding Officer, MACT and requested for recall of the order. It is also stated that a sum of Rs.50,000/- was paid by the appellant and he obtained copy of the entire proceedings and thereafter chose to file the present appeal wherein stay of the execution proceedings is also prayed for. It is stated that because of these reasons there has been a delay of 499 days in filing the appeal which may be condoned.

3. During the course of submission, the learned counsel for the appellant has also stated that the appellant was imprisoned for a period of six months and therefore, that was an added factor on account of which the appeal could not be filed timely.

4. The law regarding condonation of delay is well settled by now and no doubt the law has to be construed liberally, however, while doing so the Courts have repeatedly observed that if there is gross negligence on the part of the appellant and that there is a lack of *bona fides* then the delay could not be condoned. This is a classic case of gross negligence on the part of the appellant. Admittedly, in the instant case it is not that the appellant was not served, he had been served, he chose to file his written statement and engaged a counsel also. But, thereafter, he went into slumber on the spacious pretext that the counsel asked him not to appear in Court till the time he is informed. The name of the counsel has not been given in the application for condonation of delay.

5. Assuming that the explanation furnished by the appellant is genuine, then he ought to have followed up with some authority or professional body for initiating any action or shown his resentment that he was misled by the counsel whose services he has engaged and that he was not informed timely that the award has been passed against him. This shows the complete lack of *bona fides* as well as the gross negligence on the part of the appellant and therefore, the delay cannot be condoned.

6. The second submission that the appellant was confined to imprisonment and therefore that also prevented him from filing the appeal is also without any merit in as much as there has to be an averment regarding the same in the first instance in the application while as there is no such averment. Without there being any averment, this plea also not be taken cognizance of. Admittedly, this is a case where a young person has lost his life on account of having been hit from the back by the TSR which was being driven by the appellant. No lenient view deserves to be taken only because of the fact that the appellant is a poor person or is unable to pay the amount of award or because the deceased's family is in a much worst position as they have lost their sole bread earner. Since no sufficient cause has been shown, therefore, I am not inclined to condone the delay. The application is accordingly dismissed.

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Since the application for delay has been dismissed, the appeal also stands dismissed as being barred by time.

Pending applications also stand disposed of.

V.K. SHALI, J.

JANUARY 04, 2016

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