

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 333 OF 2017

M/s. Seven Seas Incorporate	... Petitioner
V/s.	
Mr. Bhavarsingh D. Bhati	... Respondent

Mr. N.P. Kulkarni for the Petitioner.
Mr. Sidharth Ingule for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 24/03/2017**

PC.:

1. Heard learned Counsel for the parties.
2. By consent of both the parties, matter is taken on board for final hearing at the stage of admission itself.
3. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the judgment dated 18.10.2016 passed by the Commissioner for Employees Compensation Act, 1923 and the Judge, Labour Court-2, Pune in Misc. WCA Application No. 135 of 2010 condoning the delay of more than 12 years in filing application under the Workmen's Compensation Act, 1923 for Rs. 3,57,557/-.
4. In the present proceedings, the Respondent was working with the petitioner since 12.02.1995 as helper and subsequently as Moulding Machine Operator. On 01.09.1997, the Respondent

was on leave. Though he was on leave, he attended the company to meet his girlfriend and at that time, he met with an accident on that date i.e. on 12.02.1995. His right hand was amputated below shoulder with stump. Thereafter, the Respondent joined his duty in the month of December, 1997. He worked up to December, 1997. In the month of June 2010, the Respondent was caught by the Petitioner while committing a theft.

5. Hence, Respondent abandoned the service. Thereafter, Respondent worker filed the complaint alleging an oral termination dated 22.06.2010. There was delay on the part of the Respondent to file complaint. Hence, the Respondent filed application under Section 10(i)(b) of Workmen Compensation Act, 1923 on 12.12.2010 for condonation of delay. That application was vehemently opposed by the petitioner by filing reply dated 29.07.2013 on the ground that the entire medical expenses were paid by the petitioner. Apart from that the Respondent received the amount from Insurance company in respect of group insurance made by the petitioner. They also paid sum of Rs.5,00,000/- to the Respondent.
6. Both the parties entered into the witness box to justify their claim in respect of condonation of delay. Considering the evidence on record, the Labour Court by impugned judgment dated 18.10.2016 held that the Respondent made out the sufficient ground for condonation of delay and allowed the Respondent's application. Hence, the present Writ Petition.

7. The learned Counsel for the Petitioner submits that the impugned Judgment passed by the Labour Court is against justice, equity and good conscious and same is required to be set aside. He submits that the Labour Court failed to appreciate the fact that respondent failed and neglected to show sufficient cause for condonation of more than 12 years delay in filing the compensation application.
8. The learned counsel for the petitioner submits that in the present proceeding, the accident took place on 01.09.1997. Thereafter, the petitioner bare all the medical expenses of the Respondent. Not only that, they also paid sum of Rs.5,00,000/- to the Respondent. Thereafter, the Respondent resumed on duty in the month of December, 1997. He submits that in the month of June, 2010, the Respondent committed theft. When the petitioner started inquiry, the Respondent abandoned the services.
9. The learned counsel for the petitioner submits that Respondent after more than 12 years issued legal notice dated 13.08.2010 for compensation. He submits that the Trial Court failed to consider the fact that after the accident, which occurred on 01.09.1997 the Respondent resumed his duty in the month of December, 1997. Because of the theft which he committed in the year 2010, he left the service on his own and thereafter, he issued legal notice on 13.08.2010 for compensation. He submits that the Labour Court failed to consider the fact that even the respondent in his legal notice failed to explain the sufficient cause for issuing

the legal notice after more than 12 years. He submits that bare reading of the application filed by the respondent for condonation of delay shows that with malafide intension to harass the petitioner, he filed the said application.

10. The learned Counsel for the petitioner submits that Trial Court failed to consider the fact that the respondent in his application for condonation of delay dated 12.12.2010 in paragraph 7 given two reasons one a) pressure from the petitioner for not to file any complaint, second b) want to knowledge about the proceeding.
11. The learned Counsel for the petitioner submits that the Respondent failed to produce any cogent evidence on record to show that at any time, the petitioner brought pressure on Respondent for not filing any complaint for compensation. He submits that till 2010, the Respondent was occupying their residential premises. He submits that after committing theft, the respondent left the service. These facts were not considered by the Trial Court at the time of passing the impugned judgment. Hence, the same is required to be set aside.
12. The learned Counsel for the petitioner submits that the Madhya Pradesh High Court in the matter of *Niganan & Anr. V/s. Ghanshyamdas & Anr. reported in 1997(77) FLR 390* held that unless and until sufficient cause is shown by the applicant, court should not entertain the application for condonation of delay. He relies on paragraphs 9 and 10, which reads thus:

“9 The two words which have been mentioned in the proviso as mentioned above 'satisfied' and 'due to sufficient cause' are to be interpreted properly. Satisfaction should be rational and while getting satisfied, the Commissioner has to look to the surrounding circumstances revealed by the case before him. For the purpose of finding out whether there has been a sufficient cause, he was also to be circumspective to the surrounding circumstances of the case. In the present case the appellants were harping on two fold grounds (i) The visit of the factory owner Balmukund to the house of parents of deceased Babusingh. (ii) Possibility of notice sent by the department. When they were harping on these points it was their duty to bring such material before the Commissioner which would satisfy him reasonably about sufficiency of cause explaining their default of not sending the notice as required by Section 10 of the Act. In such attempt they should have adduced the evidence which would have created the confidence in the mind of a prudent person. A prudent person would not be wholly guided by emotions. He has to act on reason. He has to take shelter of reasonable analysis of the circumstances present around the subject matter to which he has to advert his attention. The commissioner has in the present case, considered all surrounding circumstances present around the points to which he was required to advert his attention. By appreciating the evidence of Rukmanibai and Kailash, the Commissioner has rightly concluded that their evidence was not fit to be accepted. He has also pointed out in his judgment that no notice sent by the department was produced by the appellants which they could have done by either calling the concerned person to give evidence in their favour or asking him to produce such notice. Besides that, the appellants could have done that by making a simple request to Commissioner by moving an application to call concerned person of the department to state whether such notice, if any, was issued.

10. The courts, or tribunals are not guided by emotions. When the law provides issuance of such notice it has to be complied with. If no notice has been issued, the claimants should produce such material before the Workmen's Compensation Commissioner which would reasonably satisfy him on existence of sufficient cause for exonerating the claimants from such infirmity or irregularity.”

13. The learned Counsel for the petitioner submits that the Labour

Court failed to take into consideration that Section 10(1) of the Employees Compensation Act, clearly provides the limitation of 2 years from the date of occurrence of the accident. He submits that the proviso to the Section 10(1)(b) of the said Act, specifically provided that the Commissioner may entertain and decide any claim to compensation in any case, notwithstanding that the notice has not been given, or the Claim has not been preferred in due time as provided in this sub-Section, if he is satisfied that the failure so to give notice or prefer the claim, as the case may be due to the sufficient cause. He submits that the Labour Court failed to take into consideration that the court has to satisfy that there was a sufficient cause for not preferring the claim within the period of two years from the occurrence of accident. He submits that Respondent failed to show sufficient cause for condonation of more than 12 years for filing of the application and for giving the notice.

14. The learned Counsel for the petitioner submits that the learned Labour Court failed to take into consideration that the only reason made out by the Respondent was that there was ignorance of law and that the Petitioner had threatened the Respondent that he should not claim any compensation or else his services would be terminated. He submits that though the Respondent had raised such a ground in his application for condonation of delay, he failed and neglected to prove the same by cogent evidence. He submits that if the impugned judgment dated 18.10.2016 passed by the Labour Court is not set aside,

irreparable loss and injury would be caused to the petitioner.

15. On the other hand, the learned Counsel for the Respondent submits that the labour Court after considering the evidence on record rightly held that the Respondent made out the case for condonation of 12 years delay in filing the complaint. He submits that it is well settled principal of law that if sufficient cause is shown, the delay to be condoned. He further submits that on the basis of evidence on record, the Labour court rightly held that the Respondent made out sufficient cause for allowing his application for condonation of delay. He submits that the Apex Court in the matter of **N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.9, 11 and 13 of the said judgment read thus:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in regional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to

such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

16. The learned Counsel for the Respondent submits that the Respondent has good chance of success in his Claim Petition. He submits that as per the provisions of Workmen's Compensation

Act, 1923 the petitioner is bound to pay the compensation immediately. He submits that as the petitioner failed and neglected to comply with the provisions of Workmen's Compensation Act, 1923 he preferred the application for compensation with application for condonation of delay. He submits that in the interest of justice, this Hon'ble Court be pleased to uphold the judgment dated 18.10.2016 passed by the Labour Court and dismissed the Writ Petition with costs.

17. I heard both the sides at length. There is no dispute that there was delay of more than 12 years on the part of the Respondent to file appropriate application for compensation under the Workmen's Compensation Act, 1923. It is interesting to note that the accident occurred on 01.09.1997, thereafter the Respondent joined his duty in the month of December, 1997. He worked upto 2010 with the petitioner. There was theft in the petitioner's premises and since then, the Respondent stopped attending his duty. After more than 12 years, he filed application for compensation with application for condonation of delay.
18. Bare reading of application for condonation of delay, shows that the Respondent failed and neglected to disclose the sufficient cause for condonation of delay for more than 12 years in filing the application for compensation. The reasons given by the Respondent in his application for condonation of delay about lack of knowledge cannot be considered as a good ground in the present matter.

19. It is to be noted that this Court in the matter of ***Laxman Divekar v/s. State of Maharashtra 1998 (1) Mh. L.J. 745***, held that Court has no power to arbitrarily condone delay in the name of advancing substantial justice. In the case in hand, there was delay of more than 12 years. The same was not satisfactory explained by the Respondent.
20. The Apex Court in the matter of ***Commissioner, Nagar Parishad, Bhilwara v/s. Labour Court, Bhilwara & Anr. (2009) 3 Supreme Court Cases 525*** held that while deciding an application for condonation of delay, Court should not consider the merits of the matter.
21. In similar way, the Apex Court in the matter of ***Lanka Venkateshwarlu V/s. State of A.P. 2011(4) Mh. L. J. 104***, held that Court do not enjoy unlimited and unbridled discretionary powers to condone the delay.
22. It is to be noted that in the matter of N. Balkrishna (Supra) the Apex Court in paragraph 9 specifically held that acceptability of the explanation is the only criteria to decide the condonation of delay. It is also held that Court should not condone the delay on untenable grounds or arbitrary or perverse.
23. In the case in hand, the reasons given by the Respondent for condonation of more than 12 years delay that he had no knowledge about the law, cannot be accepted as a good and/or sufficient reason for condonation of more than 12 years. Hence,

authority cited by the Respondent in the matter of N. Balakrishnan (supra) is not applicable to the facts and circumstances of the present case.

24. Considering the above mentioned facts and law declared by the Apex Court, I am of the opinion that petitioner has made out case for allowing the present Writ Petition.

25. Hence, following order is passed:

a) Writ Petition is allowed.

b) The impugned Judgment dated 18.10.2016 passed by the Commissioner for Employees Compensation Act, 1923 and the Judge, Labour Court-2, Pune in Misc. WCA Application No. 135 of 2010, is set aside.

c) No order as to costs.

(K.K.TATED, J.)