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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4015 OF 2016
IN
FIRST APPEAL (ST) NO. 23456 OF 2016
WITH
CIVIL APPLICATION NO. 503 OF 2017
WITH
CIVIL APPLICATION NO. 4016 OF 2016

National Insurance Co. Ltd. ...Applicant/Appellant.
vs
Smt. Bindu Panchagulam Bharati & Ors. ...Respondents.

WITH
CIVIL APPLICATION NO. 4785 OF 2016
IN
FIRST APPEAL (ST) NO. 23177 OF 2016
WITH
CIVIL APPLICATION NO. 4786 OF 2016
WITH
CIVIL APPLICATION (ST) NO. 32252 OF 2016

National Insurance Co. Ltd. ...Applicant/Appellant.
vs
Manju Brijesh Maurya & Ors. ...Respondents.

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Mr Amol Gatne for the Applicant/Appellant in CAF No. 4015 of 2016, CAF No.4016 of 2016 and original Appellant, CAF No.4785 of 2016, CAF No.4786 of 2016 and original Appellant.
Mr Ramesh Chavanke for Respondent Nos.1 to 4 and applicant in CAF No.503 of 2017.
Mr Ramesh Chavanke a/w Sudip Mallick for applicant in CAFST No. 32252 of 2016.

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CORAM : M. S. SONAK, *J.*
27 FEBRUARY, 2017

P.C. :

Heard learned Counsel for the parties. The learned Counsel for the parties agree that both these matters can be disposed of with common order.

2 In both these matters, the Applicant – Insurance Company seeks condonation of delay of 325 days and 292 days respectively in instituting the Appeals to challenge the Judgment and Award dated 1.7.2015 made by the Commissioner for Employees Compensation, Thane.

3 In both these matters, the only reason set out for condonation of delay is that after the certified copy was received on 1.8.2015, the matter was referred to their panel of Advocates. Upon receipt of the opinion, the matter was considered at various levels and all this resulted in some delay in institution of the appeals. In paragraph 3 of Civil Application No.4105 of 2016, the following is the reason stated:-

> *"3. However, in obtaining certified copies by the trial court Advocate and legal opinion at the level of Regional Office, much time has gone and after getting the opinion from the Advocate to file Appeal, the file has been sent back to the Appellant. The appellant submit that the Appellant being a Public Institution, the decision to prefer appeal is not an individual decision. The said decision needs to be taken by following prescribed office procedure, at various levels. Thereafter, it was sent to Bombay*

for filing to the Panel Advocate."

4 In Civil Application No.4785 of 2016, same identical reasoning has been adopted. In fact, there is no difference in the material averments in two Civil Applications seeking condonation of delay.

5 Mr Amol Gatne, learned Counsel for the applicant submits that the Insurance Company is an impersonal agency, and therefore, some latitude is required to be shown in the matter. He submits that there are no malafides involved as the decision making process at different levels took some time and the same constitute sufficient cause for condonation of delay. He relies upon the decision in the case of **Indian Oil Corporation Ltd.** Vs **Subrata Borah Chowlek**[1] and **State Bank of Nagaland** Vs **Lipok Ao and Others**[2] in support of his submission that the application for condonation of delay, when made by the public authorities should be liberally construed and the delay be condoned.

6 Since, Mr Gatne requests to address this court on merits of the matter, he submits that the basic contention of the Insurance Company, in both these matters is that, there was no '*employer-employee*' relationship established as between the deceased persons and original Opponent No.2. He submits that unless this was established, there was no question of liability under the E

1 (2010) 14 Supreme Court Cases 419.
2 (2005) 3 Supreme Court Cases 752

mployees Compensation Act, 1923. Without prejudice, Mr Gatne submits that, in this case, the original owner of the vehicle (tempo) i.e. Opponent No.1 had transferred the vehicle to Opponent No.2. There was no intimation to the Insurance Company as contemplated in Section 157(2) of the Motor Vehicles Act, 1988. He submits that, in the absence of such intimation, the Insurance Company was not at all liable and the liability has been incorrectly foisted upon the Insurance Company. In any case, he submits that, in this case the deceased persons were the cleaners allegedly employed by the transferee i.e. is Opponent No.2, and therefore, they could have never been regarded as third parties. For these reasons also, Mr Gatne submits that the Insurance Company was not at all liable and the appeals do involve substantial question of law.

7 Mr Chavanke, learned Counsel for the claimants in both the appeals submits that there is absolutely no case made out by the appellant/applicant for condonation of delay. He submits that due to digitalization, it cannot be accepted that the files have to move from place to place or Officer to Officer. He submits that, in this case there are no particulars set out, with regard to movement of files and that, such excuses ought not to be considered. He refers to the decision of the Hon'ble Supreme Court in the case of **Esha Bhattacharjee** Vs **Managing Committee of Raghunathpur Nafar Academy & Ors.**[3] and the decision of Division Bench of Madhya Pradesh High Court in the case of **Oriental Insurance Co. Ltd.** Vs. **Bilkishbee**[4] to submit that

3 2013 (2) S.C.C. 649
4 2004 A.C.J. 232

this is not a fit case for condonation of delay.

8 On merits Mr Chavanke refers to Section 147 of the said Act and submits that this is a case of statutory insurance policy. He submits that the liability of the Insurance Company extends to persons being carried into a goods carriage, provided, the death has arisen out of and in the course of employment of such person. He submits that this issue is covered by the decision in the case of **G.Govindan** Vs. **New India Assurance Co. Ltd. & ors.**[5] Most importantly, Mr Chavanke submits that the grounds which the Appellant now seeks to raise in the appeal were not even raised by the Insurance Company before the Commissioner. In particular, he submits that there was no defence raised in regards to the intimation being not given to the Insurance Company as contemplated under Section 157(2) of the said Act. He submits that Opponent No.2 has deposed in the matter and has stated that such an intimation was in fact given. In such circumstances, he submits that, there is no merit, whatsoever, on the grounds now sought to be raised by the Appellant – Insurance Company and neither any substantial question of law arise for the admission of appeal.

9 Upon perusal of the application, seeking condonation of delay, there is no sufficient cause shown for condonation of delay. The quantum of delay in such matters, is not, always very important. What is most important is the quality of explanation. In this case, it is merely stated that there was some delay on account of decision

5 (1999) 3 SCC 754

making process by several bodies, however, no details have been furnished. In the case of **Oriental Insurance Co. Ltd.** Vs. **Bilkishbee** (supra), similar explanation was not accepted, because, neither the dates of sending the files by the Regional office nor the mode of transmission was disclosed. In this case also, the averments in the Civil Application are quite vague and that apart, in every case it cannot be said that the Public Authorities being not personally interested, some delay is bound to take place and the same has to be condoned.

10 The Division Bench of this Court in the case of **The State of Maharashtra & Ors.** Vs. **Vithu Kalya Govari & Ors.**[6] has refused to accept the written submission based upon "official hassle" and approval at different levels in the Government departments. The Division Bench has observed that "hassle", which in any case are unspecified in the application can always be set right by the applicants and approvals can always be obtained expeditiously. In law, the advantage has accrued to the non-applicants-claimants and the same ought not be withdrawn in a mechanical manner and that too without any sufficient cause being shown to the applicants.

11 In the case of **Basawaraj & Ors.** Vs. **The Spl. Land Acquisition Officer**[7] in the context of reasons similar to those set out in the present application, has made following observations in paragraphs 9 and 15:-

"(9) Sufficient cause is the cause for which Defendant could not

6 2008(6) Mh. L.J. 239
7 2013(14) Supreme Court Cases, 81

be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

(10) …

(11) …

(12) …

(13) …

(14) …

(15) The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

12 In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***[8], the Hon'ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

8 (2013) 12 SCC 649

> "*(i)* … …
> … …
> … …
> ***(xiv)*** *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
> ***(xv)*** *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
> **(xvi)** ……
> ***(xvii)*** *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."*

13 In ***Postmaster General and Ors. vs. Living Media India Limited and anr.***[9], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing thus:

> *"12. 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*

9 (2012)3 SCC 563

> *government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide 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."*

14 The Division Bench of this Court in ***State of Maharashtra and ors. vs. Vithu Kalya Govari and ors.***[10] has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and in action. The usual reason of " *official hassle*" or *"approval at different levels*" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and

10 2008(6) Mh.L.J. 239

the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant- State.

15 The reasons set out in the civil applications do not constitute sufficient cause. Applying the principles set out in the aforesaid decisions,, to the facts and circumstances of the present case, the civil applications seeking condonation of delay are required to be dismissed and are hereby dismissed.

16 Even other, if the written statement filed by the Insurance Company is perused, it is clear that the submissions which are now sought to be made in these appeals, were not even raised therein. The submissions are a mixed issues of law and fact. In the absence of any foundation before the Commissioner, it is impermissible for the Insurance Company to raise such issues for the first time in these appeals.

17 The Insurance Company has not led any evidence before the Commissioner. The opponent No.2, i.e., owner of the motor vehicle, has not only filed the written statement, but also examined himself. The opponent No.2 has clearly stated that the deceased persons were his employees, i.e., cleaners and that there was '*employer-employee*' relationship. The Insurance Company has never raised the defence regards non intimation in terms of Section 157(2) of the said Act. The opponent No.2, in his deposition has stated that such intimation was duly given to the Insurance Company.

Accordingly, even on merits, no case is made out to entertain the present appeals.

18 The civil applications seeking condonation of delay are dismissed. As a consequence, the appeals and the applications seeking stay also stand dismissed. The civil applications seeking withdrawal of the amounts deposited before the Commissioner are allowed. However, the withdrawals shall be permitted in accordance with the impugned orders.

19 Mr Gatne, at this stage, seeks for stay on the withdrawal of amounts by the claimants. This is not really a fit case for grant of any such relief. However, the Workmens' Compensation Commissioner, may not permit any withdrawal, for a period of four weeks from today.

20 All concerned to act on basis of the authenticated copy of this order.

(M. S. SONAK, J.)