

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 941 OF 2015
(CONDONATION OF DELAY)

AND

CIVIL APPLICATION NO.942 OF 2015
(STAY APPLICATION)

IN

FIRST APPEAL (ST) NO. 11149 OF 2014

The New India Assurance Co. Ltd. .. Appellants.

vs.

Mrs. Sucheta D. Banerjee and ors. .. Respondents.

AND

CIVIL APPLICATION NO. 101 OF 2017
(WITHDRAWAL OF AMOUNT)

IN

FIRST APPEAL (ST) NO. 11149 OF 2014

Mrs. Sucheta D. Banerjee and ors. .. Applicants.

In the matter of

The New India Assurance Co. Ltd. .. Appellants.

vs.

Mrs. Sucheta D. Banerjee and ors. .. Respondents.

Ms Poonam Mital for the Appellants-Insurance Company.

Ms Ankita Khare h/f. Mr. A. M. Gokhale for Respondent Nos.1 to 3
and for Applicants in CAF No.101/2017.

CORAM : M. S. SONAK, J.

DATE : 20 MARCH 2017.

P.C. :-

1] The Civil Application No. 941 of 2015 seeks condonation of delay of 188 days in institution of the appeal against the judgment and award dated 1 July 2013 made by the Motor Accident Claims Tribunal (MACT).

2] If the civil application seeking condonation of delay is perused, then a list of events is furnished in a routine manner indicating the movement of files. The only reason set out in the application seeking

condonation of delay, in the aforesaid regards, reads thus:

“3. The Appellants state that as the Appellants Company has to go through lengthy procedure for filing matters in the courts as the file has to go through various department and goes to the Regional office and then to the Head Office and then only after it is approved by the Head Office then approval is given by the administrative Department and then only sanction is done by the Legal Manager of the said Company. The whole process takes a long time the said appeal could not be filed in time. Thus there is a delay of 188 days in filing in appeal”.

3] The averments in the application seeking condonation of delay are quite casual and unverifiable. The statements like the Insurance Company has to go through the lengthy procedure for filing matters in the court or that the file has to move through various departments, hardly constitute any sufficient cause. The appellants seem to be under an impression that since they are a public sector undertaking, the delay will be invariably condoned, even if they cite vague reasons, which in any case is unverifiable.

4] In *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*¹, the Hon’ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

“(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

1(2013) 12 SCC 649

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.”

5] In ***State of Maharashtra & Ors. V/s. Vithu Govari & Ors.***², the Division Bench of this Court, has insisted on the necessity to explain the sufficient cause of delay in a condonation application in the following terms:

“The submission that delay has occurred because of “official hassle” and approval at different levels. This is a case which can hardly justify condonation of delay. The hassles which in any case are unspecified in the application can always be set right by the applicants and the approval can be granted expeditiously. However, as already noticed, in the present case, there is no explanation even for a period of two years. The other point raised on behalf of the applicant is that if delay is condoned, it would cause no prejudice to the claimants. This argument is equally without any merit. In law advantage has accrued to the non-applicants claimants and the same ought not to be withdrawn in a mechanical manner and that too without any sufficient cause being shown to the applicants. This itself is the prejudice to the claimants.

6] In ***Postmaster General and Ors. vs. Living Media India Limited and anr.***³, the Hon’ble Supreme Court declined to condone the delay of 427 days in filing the special leave

² 2008(6) Mh.L.J. 239

³ (2012)3 SCC 563

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 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.”

7] In ***Basawaraj and anr. Vs. Special Land Acquisition Officer***⁴, the Hon'ble Supreme Court at paragraphs 9 and 15 has observed thus:

4 (2013) 14 SCC 81

“9. Sufficient cause is the cause for which the defendant could not 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 viewpoint 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. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee, Mata Din v. A. Narayanan, Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai.)

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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 bona fide 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”.

8] Ms Mital, learned counsel for the appellants-Insurance Company, submits that the appellants have good case on merits. If this be so, this is a fit case where the Regional Manager of the Insurance Company orders an enquiry as to why the appeal was not instituted within prescribed period of limitation. There is obviously no cause shown in the application and in such circumstances, it will not be possible to extend any indulgence to the appellants-Insurance Company merely because, in the opinion of learned counsel for the appellants-Insurance Company, the appellants have a good case on merits.

9] Ms Mital also points out that the delay is of only 188 days. In this context, reference to Section 168 (3) of the Motor Vehicles Act, 1988 is relevant, which reads thus:

“168. (3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

10] It is not as if the Insurance Company was unaware of the award. No justification is pointed out for non-compliance with the provision of section 168(3) of the M.V Act. The delay of 188 days i.e. of almost 6 months, is therefore not some meager delay in the facts and circumstances of the present case. Further, in all such matters, it is relevant to refer to paragraph 9 of the decision of the Hon'ble Supreme Court in **N. Balakrishnan vs. M. Krishnamurthy**⁵:

“9. ...Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.”

11] Considering the fact, that in the present case, the Insurance Company is the applicant, it is duty of the the officials of the Insurance Company to act with utmost prudence, since they are aware of such period of limitation. Further, in all such matters, as noted earlier, the court while dealing with application for condonation of delay is not concerned with the length of delay but with the plausibility and acceptability of explanation. In this case, the explanation given by the applicant lacks quality and can hardly be regarded as sufficient cause.

12] Upon cumulative consideration of the aforesaid facts and circumstances, there is no case made out for condonation of delay of 188 days in instituting the appeal. Accordingly, the Civil Application No. 941 of 2015 is dismissed. Consequently, First Appeal (St.) No. 11149 of 2014 and the Civil Application No. 942 of 2015 seeking stay also stands dismissed.

⁵ (1998)7SCC123

13] Since the civil application seeking delay and consequently, the appeal itself is dismissed. Even the Civil Application No. 101 of 2017 for withdrawal does not survive and the same is also dismissed. However, the respondents/claimants are at liberty to withdraw the compensation amount by applying to the MACT/Executing Court, which shall pay compensation amount in terms of the impugned award.

14] The Registry is directed to transmit the amount of Rs.25,000/- deposited in this court by the appellants-Insurance Company to the concerned MACT, within four weeks from today.

(M. S. SONAK, J.)

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