

**C.M. Nos. 19926-27 CII of 2016 and
FAO No. 5824 of 2016**

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

Date of Decision: 22.12.2017.

**(i) C.M. Nos. 19926-27 CII of 2016 and
FAO No. 5824 of 2016**

Subhash @ Prabhat

.....Appellant

Versus

Pankaj and others

.....Respondents

**(ii) C.M. Nos. 20035-36-CII of 2016 and
FAO No. 5841 of 2016**

Anil

.....Appellant

Versus

Pankaj and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. Parminder Singh, Advocate
for the applicants-appellants.**

AVNEESH JHINGAN, J.

The appeals are against the award dated 3.9.2010 passed by the Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal').

In a motor vehicular accident that occurred on 16.2.2009 Anil s/o Harphool Singh and Subhash @ Parbhat s/o Satpal suffered injuries. In the said accident, the offending vehicle was Scorpio bearing registration No.HR-05-R-0505.

Claim petitions under Section 166 of the Motor Vehicles Act,

1988 (for short 'the Act') were filed. The Tribunal after appreciating the

facts and considering the evidence, awarded a sum of Rs. 42,324/- in case of Anil and Rs. 36,680/- in case of Subhash @ Parbhat along with interest at the rate of 7.5% per annum.

Two appeals have been filed against the aforesaid award for enhancement of compensation. The appeals are accompanied by applications under Section 5 of the Limitation Act, for condoning the delay of 2054 and 2050 days respectively.

The reason given for the delay is that the applicants entrusted the documents to Sh. Dinesh Bali, Advocate and they were under bonafide impression that the appeals have been instituted and are lying admitted. It was only when the counsel expired, on inquiry they could not get knowledge about filing of the appeals or the registration number of FAOs. Thereafter as they were retaining photocopies of the award, they collected the papers and filed the appeals.

Sufficient cause put forth for condonation of delay is not worth acceptance. It would be worthwhile to notice that the award was passed on dated 3.9.2010 and the appeals were filed in July 2016. The applications contain no details as to when the said cases were handed over to the Advocate for filing of the appeals. There is no proof regarding any payment of fee. There is no affidavit supporting the applications from the office of the Advocate to whom allegedly documents were handed over.

During the course of arguments it was inquired from the counsel as to when Sh. Dinesh Bali, Advocate expired. It was informed that he expired in March 2016. Meaning-thereby that if the documents were handed over within the period of limitation, the same would have been

given in the year 2010. For almost six years, the applicants never bothered

to inquire about the position of their appeals or to have copies of the same.

Learned counsel for the applicants relied upon the decision of Hon'ble the Apex Court in case of **N. Balakrishnan Vs. M. Krishnamurthy, 1998(7) SCC 123.** The said decision was relied upon to state that length of delay should not matter, acceptability of the explanation is the only criterion.

Learned counsel for the applicants argued that instead of considering the explanation for condonation of delay, this Court should consider that the applicants are ready to give away, the interest for the delayed period.

The law is well settled that a liberal view should be taken while condoning the delay. It has further been held that where the delay is inordinate, more cautious approach should be adopted.

Reliance in this regard is placed upon the decision of Hon'ble Apex Court in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another,** 2010 (5) SCC 459, held as under :-

“8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

In the above decision, it has been held that explanation of sufficient cause will depend upon the facts of the case. Liberal approach should be adopted of condoning short period delay and strict approach to be adopted in case of inordinate delay.

In the present case, delay of 2050 days cannot be by any stretch of imagination termed as short delay.

Further, Division Bench judgment of this Court in case of **Municipal Committee (now Municipal Corporation), Bathinda vs. Bachan Singh through his LRs and another**, 2017 (3) R.C.R. (Civil) 145 (P&H) (DB), while refusing to condone the delay of 1760 days, as the explanation was not satisfactory, held as under :-

"10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 1760 days in filing and 85 days in refiling the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking totality of events which had taken place in a particular case. In the present case after

appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The learned Single Judge decided the matter on 11.5.2011 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellant has filed the appeal on 5.4.2016 and refiled on 10.8.2016, after a colossal delay of 1760 days. The explanation of the appellant praying for condonation of delay in filing and refiling the appeal, as noticed hereinabove, is bereft of sufficient cause for delay caused in filing the appeal. Moreover, even after the judgment dated 26.11.2014 was passed accepting the appeal against the judgment on the basis of which order was passed in the present case, the Letter Patent Appeal was filed on 5.4.2016, i.e., after about one year and four months. There is no satisfactory explanation for this delay as well. The Government department is supposed to pursue its litigation with due diligence. A stale matter cannot be revived by approaching the Court belatedly.

11. In view of the above, finding no merit in the applications for condonation of 1760 days' delay in filing and 85 days' in refiling the appeal, the same are hereby dismissed and consequently, the appeal is dismissed as time barred."

From the perusal of the above decision, it is evident that there has to be a satisfactory explanation put forth for condonation of delay.

In the present case, there is no explanation much less

satisfactory explanation for condonation of delay.

Here, the delay is of more than 5 ½ years which is inordinate, there is not even a word referred explaining the delay or conduct of the applicants from September 2010 to March 2016.

Further the Hon'ble Apex Court in **Pundlik Jalam Patil (D) by Lrs. Versus Exe. Eng. Jalgaon Medium Project and another**, 2008(17) SCC 448, has held as under:

“..... It was its duty to prefer appeals before the Court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights.’”

It was held that when applicants' conduct suggest negligence stale claim should not be re-opened.

The applicants were negligent for about six years in not making any inquiry or taking any effective steps for filing of the appeal.

Section 5 of the Limitation Act, provides that the delay would be condoned if 'sufficient cause' is shown explaining the delay. Merely because the applicants would not be claiming interest for the period of delay, cannot be a ground for condoning the delay.

Hon'ble the Apex Court in its latest decision in **Basawaraj and another Vs. Special Land Acquisition Officer**, 2013 (14) SCC 81, held that delay cannot be condoned on the ground that the appellant will loose interest for the period of delay. The Hon'ble Apex Court further did not approve such kind of judgments where the delay was condoned subject to

the conditions that the appellants would not be entitled to interest. The relevant observations are :

“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.”

In the above decision, Hon'ble the Apex Court has not approved such approach adopted by the Courts for condoning the delay on the condition that no interest would be awarded for the period of delay.

In the present case, the explanation put forth is not acceptable, in such circumstance, delay cannot be condoned mechanically .

In case **Amalendu Kumar Bera and others Versus The State of West Bengal** 2013 (2) RCR (Civil) 534, the Hon'ble Apex Court has held

mechanically condoned and in the absence of 'sufficient cause.' In case of serious negligence, the delay should not be condoned.

The judgment relied upon by learned counsel would be of no help in the facts of the present case. It is not only the length of the delay but the explanation put forth is not worth acceptance. In such circumstance, delay cannot be condoned.

For the reasons mentioned above, the applications for condonation of delay are dismissed.

As a result, the appeals are also dismissed as time barred.

22.12.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No