

**C.M. No.21205-06-07-CII of 2016 in/and
FAO No. 6301 of 2016**

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

**C.M. No.21205-06-07-CII of 2016 in/and
FAO No. 6301 of 2016**

Date of Decision: 22.12.2017.

Rajbala and others

.....Appellants

Versus

Dalel Singh Malik and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. Anil Kumar Gahlawat, Advocate
for the appellants.**

**Mr. Vinod Gupta, Advocate
for respondent No.3-Insurance Company.**

AVNEESH JHINGAN, J.

The appeal against the award dated 31.3.2010 has been filed, and is accompanied by an application under Section 5 of the Limitation Act, for condonation of delay of 2019 days in filing the appeal.

On 8.10.2008 Rajinder Singh, met with a motor vehicular accident. In the said accident, the offending vehicle was Car bearing registration No. DL-2CAH-1222. In the accident, he suffered multiple injuries. He was shifted to Delhi hospital, from there he was taken to Maharaja Aggarsain Hospital, Punjabi Bagh, Delhi, thereafter, he succumbed to his injuries on 9.10.2008.

In a claim petition filed by the legal heirs of the deceased under Section 166 of the Motor Vehicles Act, 1988, (for short 'the Act') the Tribunal awarded a sum of Rs.27,13,000/- alongwith interest at the rate of 7.5% per annum. The claim petition was disposed of by Motor Accidents

Claims Tribunal, Jhajjar, (for short 'the Tribunal') vide award dated

31.3.2010.

Against the said award, the present appeal has been filed alongwith application for condonation of delay.

In the application, it has been averred that on passing of the award, the applicant No.1 wanted to file the appeal for enhancement but she was wrongly advised by clerk of the counsel at the District Court, Jhajjar that there is no limitation for filing the appeal. It was only in January 2016 when the applicant met her counsel at Jhajjar regarding encashment of FDR of her children that she came to know that limitation had expired as it was only 90 days.

The explanation put forth for condonation of delay is not acceptable. If the applicant was willing to file the appeal, she would have contacted the counsel and not the clerk of the counsel of District Court. The above said is only a bald statement and is not supported by any affidavit, either of the counsel or of the clerk. Wrong advise of a counsel in the given circumstance, can be a ground for condonation of delay, to get an advise from the clerk of the counsel specially by a person who has already pursued the claim petition, cannot be accepted as an excuse.

Even if it is assumed that the applicant was wrongly advised by the clerk and she acted upon the said advise even then the award was dated 31.3.2010, the appeal was filed in January 2016, she would not have waited for almost five years and nine months only on the ground that there is no limitation for filing the appeal. The explanation put forth does not appear to be bonafide. If there was a grievance against the compensation awarded, the applicants would have acted within a reasonable period to take steps to file the appeal. Hence, it is an attempt to revive a stale claim.

The provision of Section 5 of the Limitation Act cannot be invoked by those litigants who were negligent in pursuing their remedies of appeal. The limitation exists on the statute and the same cannot be condoned mechanically. The explanation put forth is not satisfactory and in such circumstance, the delay cannot be condoned. .

Reliance is placed upon the decision of Hon'ble the 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

be taken where period of delay is short and strict approach be adopted in cases of inordinate delay.

Further, the 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.

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 neglect stale

claim should not be re-opened.

In the present case, the applicants were negligent for about six years.

While concluding the arguments, learned counsel for the applicants argued that sufficient cause put forth may not be considered and delay be condoned on the condition that the applicants would not be entitled to interest for the period of 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 lose 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.”

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.

For the reasons mentioned above, the application for condonation of delay is dismissed.

As a result, the appeal is also dismissed as time barred.

22.12.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No