

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

CM No. 6234-CII of 2017 in/and
FAO No. 1875 of 2017 (O&M)

DATE OF DECISION : 20.12.2017

Bimla Devi and others

.... APPELLANTS

Versus

Santosh Ram and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Mansi Bansal, Advocate,
for the applicants-appellants.

* * *

AVNEESH JHINGAN, J. (Oral)

The appeal has been filed against the award dated 01.08.2011 passed by the Motor Accident Claims Tribunal, Hoshiarpur (for short, 'the Tribunal').

The appeal is accompanied by an application (CM No. 6234-CII of 2017) under Section 5 of the Limitation Act for condoning the delay of 1910 days in filing the appeal.

In a motor vehicular accident, that occurred on 10.04.2008, Kishan Pal Singh lost his life. 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 vide its award dated 01.08.2011 awarded compensation of ₹ 2,74,000/- along with interest at the rate of 6% per annum.

Against the said award, the appeal has been filed for enhancement of compensation, along with application for condonation of delay of 1910 days.

The application contains an explanation that the applicants were not aware of passing of the award and it was only in October, 2013, when they verified about the pending claim from their counsel at Hoshiarpur, they came to know that their claim petition has been decided. It has further been averred that the applicants never knew the exact addresses of the respondents for filing the execution of the award and they were financially very poor, because of which they could not pursue the appeal remedy before this court for enhancement of compensation.

The aforesaid explanation put forth in the application is not satisfactory, as no details are given in the application. The application came up for hearing on 01.12.2017. Learned counsel was asked to give details of execution and the dates when the compensation amount was paid. She sought time. The case was simply adjourned to 07.12.2017. On the said date, again learned counsel sought more time to give the details. The case was adjourned to 20.12.2017. Today, learned counsel very fairly and candidly stated that in spite of her best efforts, the applicants are not willing to give the details of execution proceedings and the date when they received the compensation amount. In such circumstances, it is evident that the entire story made is to cover up the delay and it is not a bonafide stand.

There is no quarrel on the proposition that a liberal approach

should be adopted while condoning the delay. Along with the said proposition, it is to be considered, firstly that a sufficient cause is shown, and secondly that the applicant is putting forth the relevant details and the reason given is bonafide.

In the present case, the applicants, inspite of having reasonable opportunity, have instructed their counsel not to give the date of receiving the compensation amount awarded by the Tribunal. The entire basis of the explanation for condonation of delay would have depended on the said date. The reason given that till October, 2013, they were not aware of the award dated 01.08.2011 passed in their favour, is not supported by any evidence. There is no affidavit of the counsel before the Tribunal to state that the award passed in August, 2011, was not conveyed to the applicants till October, 2013.

Apart from the abovesaid reason, even after coming to know about the award in October, 2013, the appeal was filed as late as in January, 2017. The reason mentioned for this delay is that the applicants could not file the execution proceedings, as the exact addresses of the respondents were not known. This plea raised is factually wrong. The Tribunal in its award held that the claimants would be entitled to receive the amount from the respondents. There were two respondents before the Tribunal. First was the driver of the three-wheeler and the second was the owner of the three-wheeler, i.e. Mahindra & Mahindra Ltd., through Area Manager, SCO No. 17, Sector 26-D, Chandigarh. The complete address of respondent No.2 was

there in the award itself. Even otherwise, it is unbelievable that address of Mahindra & Mahindra Ltd., was not available with the applicants.

The third limb of the explanation is that because of the poor financial condition, the applicants could not pursue the remedy of appeal. The said stand cannot be accepted, as for the reasons best known to the applicants, they have withheld the information as to when they received the compensation amount. The law is well settled that one who approaches the court for equity should come with clean hands. The information relevant for the decision of the issue should be disclosed by the applicants. Reliance in this regard is placed upon a decision in ***Esha Bhattacharjee Vs. Raghunathpur Nafar Academy & Ors.***, 2013 (4) RCR (Civil) 785, wherein the Hon'ble Apex Court laid down various principles inter alia :

“x x x

(v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.”

In **Mahanagar Telephone Nigam Limited Vs. State of Maharashtra and others**, 2013 (9) SCC 92, the Hon'ble Supreme Court held as under :-

“20. In Oswal Fats and Oils Limited v. Additional Commissioner (Administration) (supra), relief was denied to the appellant by making the following observations:

“It is quite intriguing and surprising that the lease agreement was not brought to the

notice of the Additional Commissioner and the learned Single Judge of the High Court and neither of them was apprised of the fact that the appellant had taken 27.95 acres land on lease from the Government by unequivocally conceding that it had purchased excess land in violation of Section 154(1) of the Act and the same vested in the State Government. In the list of dates and the memo of special leave petition filed in this Court also there is no mention of lease agreement dated 15-10-1994. This shows that the appellant has not approached the Court with clean hands. The withholding of the lease agreement from the Additional Commissioner, the High Court and this Court appears to be a part of the strategy adopted by the appellant to keep the quasi-judicial and judicial forums including this Court in dark about the nature of its possession over the excess land and make them believe that it has been subjected to unfair treatment. If the factum of execution of lease agreement and its contents were disclosed to the Additional Commissioner, he would have definitely incorporated the same in the order dated 30-5-2001. In that event, the High Court or for that reason this Court would have non-suited the appellant at the threshold. However, by concealing a material fact, the appellant succeeded in persuading the High Court and

this Court to entertain adventurous litigation instituted by it and pass interim orders. If either of the Courts had been apprised of the fact that by virtue of lease deed dated 15-10-1994, the appellant has succeeded in securing temporary legitimacy for its possession over excess land, then there would have been no occasion for the High Court or this Court to entertain the writ petition or the special leave petition.

20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.”

(emphasis supplied)

21. By applying the ratio of the above noted judgments to the facts of this case, we hold that the appellant is guilty of not coming to this Court

with clean hands and the explanation given by it for 401 days' delay has to be treated as wholly unsatisfactory and the prayer for condonation of delay is liable to be rejected."

In the above case, the delay was not condoned by the Hon'ble Apex Court, relying upon its earlier decision in **Oswal Fats and Oils Ltd. Vs. Commr. (Admn.)**, (2010) 4 SCC 728. It was held that the person who approaches the court for grant of relief is under obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case.

Further, in **H. Dohli Constructions Co. (P) Ltd. Vs. Nahar Exports Ltd. and another**, 2015 (1) SCC 680, it has been held as under :-

"20. In the case on hand, the delay in refiling was 1727 days. As rightly pointed out by the learned Senior Counsel for the Appellant (s), the Respondents paid the scrutiny charges on 11.04.2008 as disclosed in the Receipt No. 73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11.04.2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April, 2008. Thereafter, if rectification of whatever defects were not carried out by the Respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the Respondents to have satisfactorily explained such a long delay in refiling. When we

refer to the applications filed on behalf of the Appellant(s), we find that there was no convincing explanation as to how the Respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The Respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior counsel for the Appellant (s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial Court. As a matter of fact the appeal papers were filed without payment of any Court fee. This only affirms the stand of the Appellant (s) that there was no bona fide in the Respondents' claim and that they were seriously interested in challenging the judgment of the trial Court as against the non-grant of relief of specific performance. We also fail to see as to how the Respondent No.1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim Vigilantibus Non

Dormientibus Jura Subveniunt (Law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The Respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days delay involved in filing the appeals.

21. x x x

22. x x x

23. *When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals*

cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.”

In the above case, the Hon'ble Apex Court refused to condone the delay in re-filing as there was no specific explanation coming forth and the blame was simply put on the previous counsel, but no details were given.

In view of the aforesaid judgments and for the reasons mentioned above, the explanation furnished by the applicants is not satisfactory. The withholding of details of the execution proceedings and the date of receipt of compensation amount by the applicants further raises a doubt about the explanation.

No other issue has been raised or pressed.

The application for condonation of delay is dismissed. Consequently, the appeal is also dismissed being time barred.

December 20, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes