

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 603 of 2017 (O&M)

Date of Decision: 17.11.2017

Harpreet Kaur and another

.....Appellants

Versus

Manjeet Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nitin Mittal, Advocate
for the appellants.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 02.03.2015 passed by the Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal').

The afore-said appeal is accompanied by an application filed under Section 5 of the Limitation Act, for condonation of delay of 425 days in filing the appeal.

The litigation is a result of motor vehicular accident that occurred on 10.9.2012 in which Khushi Dhiman 9 year Kid lost her life. The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the parents. The Tribunal awarded a sum of Rs.2,25,000/- alongwith interest at the rate of 7.5% per annum.

The explanation given for the delay is that the applicants are poor people and do not know the technicalities of law.

The explanation put forth is not satisfactory. The claimants filed the claim petition in January 2013 and the accident occurred on

exhibits were duly produced before the Tribunal. Vide award dated 2.3.2015 the said claim petition was partly allowed. After the decision of the claim petition, the counsel before the Tribunal would have guided the litigant about filing of the appeal. The applicants being poor persons in itself will not be a ground to condone the delay especially when they had already pursued one remedy and have been awarded some amount of compensation.

The application gives no reason or details as to when the applicants came to know about their right to file appeal and if there was some financial difficulty when and how the financial arrangements were made.

The liberal view should be taken for condonation of delay but it will not mean that the mechanical approach should be adopted. While dealing with the condonation of delay, the fact remains that the limitation still exists on the statute.

A Division Bench 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.

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 decisions, it has been held that explanation of sufficient cause will depend upon the facts of the case. If no satisfactory explanation is coming forth, delay should not be condoned.

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 further noticed by the Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari** 2009(1) RCR (Civil) 892 as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether

circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”

The Hon'ble Apex Court in case *Tribhuvanshankar Vs. Amrutlal*, 2014 (1) RCR (Civil) 206, has laid down that the fundamental policy behind the limitation is that if a person does not pursue his remedy within the stipulated time-frame, the right to sue gets extinguished.

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 that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned. In case of serious negligence, the delay should not be condoned.

Hon'ble the Apex Court in *State of Nagaland v. Lipok Ao*, 2012 (3) RCR (Civil) 73: 2012 (2) Recent Apex Judgments (RAJ) 482: 2012 (5) SCC 157, in paragraph 24 has held as under:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

The Hon'ble Apex Court in case *Basawaraj and another v. Special Land Acquisition Officer* 2017(3) PLR 299, while dealing with the scope of "sufficient cause" has laid down as under:

".....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."

In *P.K. Ramachandran v. State of Kerala & Anr., 1997(4) R.C.R.(Civil) 242 : AIR 1998 SC 2276*, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under :-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

In *Union of India v. Nripen Sarma* (SC) 2013(4_) SCC 57, the Hon'ble Apex Court held in para-5 as under:-

"5. The appellant has preferred this appeal against the final judgment dated 10.09.2007 before this Court. This appeal is also barred by limitation of 114 days. There is no satisfactory explanation for condonation of delay before this Court also."

In the present case, for the reasons mentioned above, the explanation rendered by the appellants is not satisfactory. The

Withholding of details of the counsel further raises a doubt about the

explanation.

No other issue has been raised or pressed.

The net result is that the application for condonation of delay is dismissed and as a result thereof the appeal is also dismissed being time barred.

17.11.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No