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

FAO No. 815 of 2017 ( O&M )

DATE OF DECISION : 30.11.2017

Sonu Kumar and others

.... APPELLANTS

Versus

Makhan Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. K.S. Dhanora, Advocate,
for the appellants.

Mr. Arun Sharma, Advocate,
Mr. T.K. Joshi, Advocate,
for respondent No.3 – Insurance Company.

* * *

**AVNEESH JHINGAN, J.**

This appeal has been filed against the award dated 30.10.2014 passed by the Motor Accident Claims Tribunal, Kaithal (for short, `the Tribunal') for enhancement of the compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act').

The present appeal has arisen out of the accident that occurred on 16.12.2012 between TATA ACE bearing registration No. CH-01TA-3140 and Canter bearing registration No. HR-64-5440, in which Raj Bala, mother of the appellants, lost her life.

The appeal is accompanied by applications (CM No. 2562-2563-CII of 2017) under Section 5 of the Limitation Act for condoning the delay of 601 days in filing and 35 days in re-filing the appeal.

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At the very outset, learned counsel for the appellants submits that the delay in filing and re-filing the appeal be condoned, subject to the condition that interest for the period of delay be not paid to the claimants.

The aforesaid submission cannot be accepted, as there cannot be a conditional condonation of delay. Reliance is placed upon a decision of the Hon'ble Apex Court in ***Basawaraj and another Vs. Special Land Acquisition Officer,*** 2013 (14) SCC 81, wherein it has been 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*

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> *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."*

Faced with this situation, learned counsel for the appellants contended that the delay has occurred because the appellants are villagers and are not aware of the limitation to file the appeal. They collected the papers from the counsel of the lower court and same were handed over to a High Court lawyer through counsel of the lower court in the month of January, 2015, i.e. within the limitation to file the appeal. However, when in September, 2016, an enquiry was made by the appellants, they came to know that no appeal has been filed by the said counsel. When it was asked as to why the appeal was not filed, he informed that full payment of counsel fee was not made and only part payment was made, therefore, the appeal was not filed. Thereafter, the documents were collected and the present appeal was filed. In this way, the delay of 601 days in filing the appeal occurred.

From a perusal of the application for condonation of delay, the contradiction in the stand of the appellants is evident. Firstly, it is stated that they are not aware of the limitation to file the appeal, in the same breath, it is stated that the documents were handed over to the counsel in January, 2015, i.e. within the period of limitation, to file appeal.

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No detail of the counsel has been given to whom the documents were handed over. Even affidavit of the counsel in support of the application has not been filed. Even the name etc. of the counsel has not been mentioned in the application.

On the last date of hearing, i.e. on 16.11.2017, learned counsel for the applicants was granted an opportunity to file better particulars, if he so desires, giving details of the Advocate, who did not file appeal on the ground that full counsel fee was not paid to him, and following order was passed :-

> *"Notice of motion was issued in these applications on 25.10.2017 qua respondent No.3. On that day, Mr. Arun Sharma, Advocate for Mr. T.K. Joshi, Advocate, who was present in Court, accepted notice.*
>
> *Today, counsel for applicant has handed over copy of the appeal to the opposite counsel.*
>
> *The matter has been heard partly on the application for condonation of delay. The ground taken for condonation of delay is that the applicants handed over the documents for filing the appeal to a High Court counsel through their lower Court counsel in January 2015. However, when in September 2016, an inquiry was made, they were informed that the appeals have not been filed as they had not made full fee to the counsel. There is no detail mentioned in the application regarding the Advocate, who did not file the appeals. An opportunity is provided to the counsel for the applicants to file better particulars, if he so desires.*

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*Learned counsel for the applicants states that he has instructions not to disclose the name of the counsel.*

*Adjourned to 30.11.2017.*

*Photocopy of the order be placed on the files of each connected cases."*

Today, learned counsel has again stated that he has instructions not to mention the detail of the counsel. In such circumstances, it is very difficult to believe that the plea raised in the application is bonafide.

Even otherwise, it is not acceptable behaviour that after giving the papers for filing of appeal, no enquiry was made by the appellants about their appeal for almost one year and eight months. As per the application, counsel had not filed the appeal as only part payment was made. No proof has been adduced regarding part payment having been made to the counsel. Apart from this, if only part payment had been made, there was all the more reason for the appellants to be in touch with the counsel to know about the status of the appeal and to clear the account, if any payment was left.

Though there can be no dispute on the proposition that for mistake of the counsel delay should be condoned. But in the present case, it has not been even prima facie shown that the delay has occurred because of the mistake of the counsel. Even if it is assumed that there was a mistake of the counsel, the negligence on behalf of the appellants is there, as for almost quarter to two years, no enquiry was made by them regarding the status of the appeal.

The law is well settled that in cases of condonation of delay, a

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liberal approach should be adopted and the phrase "sufficient cause" should be liberally construed. At the same time, the 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 a liberal approach

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should be adopted, where the delay is of short period and a conscious decision is to be taken, where the delay is inordinate.

In the present case, delay is of 601 days, which by no stretch of imagination can be said to be of a short period. So far as the liberal approach in condonation of delay is concerned, it cannot be taken to the extent that where sufficient explanation is not coming forth, delay should be condoned.

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*

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> *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."*

In ***P.K. Ramachandran Vs. State of Kerala and another,*** 1997 (4) RCR (Civil) 242, the Hon'ble 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."*

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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.

While considering a similar issue, the Hon'ble Apex Court in ***Esha Bhattacharjee Vs. Raghunathpur Nafar Academy & Ors.,*** 2013 (4) RCR (Civil) 785 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*

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*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*

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> *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.

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In the present case, in spite of specific order of the court, learned counsel refused to give details of the previous counsel, on which the entire blame is being put. In such circumstances, the explanation put forth by the applicants is not worth acceptance, as the material details are being intentionally withheld.

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*

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*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*

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*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*

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> *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 rendered by the appellants is not satisfactory. The withholding of details of the counsel further raises a doubt

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about the explanation.

No other issue has been raised or pressed.

The net result is that the applications for condonation of delay are dismissed. Consequently, the appeal is also dismissed being time barred.

**November 30, 2017** **( AVNEESH JHINGAN )**
ndj **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes

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