

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 28 of 2008**

- Manish Kumar S/o Shri G. S. Gulzar Singh, Caste-Rajput, aged about 32 years, R/o Rajapara, Daundilohara, Tehsil - Daundilohara, District - Durg C.G.

---- Appellant**Versus**

- Smt. Padma Devi , w/o Kushalchand, aged about 50 years, R/o Daundilohara, Tehsil - Daundilohara, District - Durg C.G.

---- Respondent

For Appellant	:	Shri Abhishek Singh, Advocate appears under the authority of Smt. Hamida Siddique, Advocate.
For Respondent	:	None appeared despite service of notice.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**14/12/2018**

1. By this appeal the appellant (non-applicant/owner of offending vehicle) has challenged the impugned order dated 29.12.2007 passed by the learned Additional Motor Accident Claims Tribunal, Balod in Case No.78/07 whereby the application filed by the appellant under Section 5 of the Limitation Act has been rejected and consequently the application filed under Order 9 Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex-parte award dated 4.1.2007 has been dismissed being barred by limitation.
2. Brief facts of the case relevant for disposal of present appeal are that the claimant/respondent filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act, 1988') before the competent Claims Tribunal pleading inter alia that she was running a general store shop in Dondhilohara. On 6.2.2006 at about 4 a.m. in the morning the offending

vehicle bearing registration number CG07-ZD-5978, which was being driven in a rash and negligent manner by its driver, dashed and entered into her shop and damaged the showcase, racks and articles kept therein due to which she suffered loss of Rs.80,000/-.

3. On filing of claim application, the learned Claims Tribunal issued notice to the non-applicant/appellant herein through registered post, but on the date fixed for hearing the appellant herein did not appear and therefore the Claims Tribunal looking to the acknowledgement receipt available on record, proceeded ex-parte against the appellant and after completing the proceedings passed an award of Rs.79,509/- in favour of the claimant/respondent herein on 4.1.2007. Respondent herein thereafter filed an application for execution of the said award and on receipt of notice of execution proceedings and getting the knowledge of award, the appellant herein filed an application under Order 9 Rule 13 of CPC for setting aside the ex-parte award along with an application under Section 5 of the Limitation Act seeking condonation of delay in filing application for setting aside the ex-parte award.
4. The Claims Tribunal while considering the application filed under Section 5 of the Limitation Act has arrived at a conclusion that reasons assigned in the application are not correct and do not constitute sufficient grounds for condoning the delay of more than 9 months in filing the application for setting aside ex-parte award and accordingly rejected the application for condonation of delay and as a consequence thereto dismissed the application filed under Order 9 Rule 13 of CPC as well, as having not been filed within prescribed period of limitation.
5. Learned counsel appearing on behalf of the appellant submits that notice

of claim application was never served on the appellant and he came to know about the award dated 4.1.2007 only on 9.10.2007 when he appeared before the Executing Court in compliance of the notice served on him by the said Court and immediately thereafter he applied for certified copies of the orders sheets of Claim Case No.64/06 including the award dated 4.1.2017 and filed the application for setting aside the award within the period of 30 days from the date of receipt of certified copy of the award. He further submits that the delay was bonafide and unintentional for the reasons stated in the application for condonation of delay. He further submits that learned Claims Tribunal could have considered that the appellant has filed the application within 30 days from the date of knowledge i.e. 9.10.2017.

6. I have heard learned counsel for the appellant and perused the records.
7. Learned Claims Tribunal while deciding the application under Section 5 of the Limitation Act filed along with application under Order 9 Rule 13 of CPC has very specifically recorded a finding that notice of execution proceedings of Claim Case No.64/06 was served on the appellant on 13.6.2007 and in pursuance thereof, he appeared before the Executing Court on 7.7.2007. It is thus clear that the appellant got knowledge of the award dated 4.1.2007 and his liability came to his knowledge on 13.6.2007 when he received the notice of execution and specifically when he appeared before the executing court on 7.7.2007 where he took time to satisfy the ex-parte award. However, he did not choose to file application under Order 9 Rule 13 of CPC within thirty days from 7.7.2007 and filed the same after lapse of sufficient long time i.e. on 23.10.2007.
8. From perusal of the memo of appeal filed before this Court it is clear that

the appellant has not controverted the findings recorded by the Claims Tribunal in execution proceedings from which an inference can very well be drawn that the finding recorded by the Claims Tribunal/Executing Court with respect to knowledge of passing of the award against him is admitted by the appellant. The appellant seems to have appeared before the Executing Court on number of dates, as recorded by the Claims Tribunal in the impugned order, and took time for satisfying the award. He has not taken any steps for challenging or setting aside of the ex-parte award passed against him. On 1.10.2007 for the first time he applied for supply of certified copies which were received by him on 9.10.2017 and the application under Order 9 Rule 13 CPC along with an application under Section 5 of the Limitation Act was filed by him on 23.10.2007.

9. Article 123 of the Limitation Act provides limitation of 30 days for filing an application for setting aside of ex-parte decree or award and where the summons or notice was not served, the period of limitation would start from the date of knowledge of decree. In the case in hand, there is no doubt with respect to the date of knowledge of passing of ex-parte award against the appellant in view of not disputing his appearance before the executing court on notice of execution of award. In view of the uncontroverted fact recorded by the learned Claims Tribunal that the appellant got knowledge of the ex-parte award when he appeared before the learned Claims Tribunal in execution proceeding on 7.7.2007 after receipt of notice of execution proceeding on 13.6.2007, but till 1.10.2007 he even did not bother to file an application for obtaining certified copy of the award dated 4.1.2007 or order sheets of the claim case.

10. Other fact which is relevant for consideration by this Court is that the

appellant in his application under Section 5 of the Limitation Act filed along with the application under Order 9 Rule 13 of CPC has pleaded that he got knowledge of award dated 4.1.2007 only on 9.10.2007 when he had obtained certified copies of it. True it is that details of the award could have been gathered only after perusing the certified copy of the same but so far as the knowledge with respect to liability in pursuance of the award passed against him is concerned, the appellant got knowledge when he first appeared before the Claims Tribunal in execution proceedings on 7.7.2007 in compliance of the notice dated 13.6.2007. The appellant cleverly suppressed this important fact of getting knowledge with respect to passing of award against him and has not offered any explanation as to why even after getting knowledge on 7.7.2007 with respect to passing of the award, he had not filed any application for obtaining certified copy of the same prior to 1.10.2007 i.e. for about 3 months from the date of knowledge. whereas period of limitation for filing application under Order 9 Rule 13 CPC is only 30 days.

11. In Pundlik Jalam Patil (dead) by LRS vs. Executive Engineer, Jalgaon Medium Project and another reported in **(2008) 17 SCC 448** the Hon'ble Supreme Court has held as under:-

“14. It is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay but the delay was

condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. The High Court having found that the respondent in its application made incorrect submission that it had no knowledge of the award passed by the Reference Court ought to have refused to exercise its discretion. The High Court exercised its discretion on wrong principles. In that view of the matter we cannot sustain the exercise of discretion in the manner done by the High Court.”

12. In **Ajit Singh Thakur Singh vs. State of Gujarat** reported in (1981) SCC 495 the Hon'ble Supreme Court in Para-6 has observed thus:-

“.....it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. *No event or circumstance arising after the expiry of limitation can constitute sufficient cause.*”

(emphasis supplied)

In **Ramlal v. Rewa Coalfields Ltd.** reported in **AIR 1962 SC 361** the Hon'ble Supreme Court has held as under:-

“In construing section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has

accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. It is further necessary to emphasize that even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the *diligence* of the party of its bona fides may fall for consideration." (emphasis supplied)

13. In the case in hand, if we consider the facts of the case in the light of aforementioned law laid down by the Hon'ble Apex Court, it is apparent that firstly the appellant has not approached the Court with clean hands as he has not stated the correct facts with respect to the date of knowledge and secondly, he has not taken any step for obtaining certified copy of the ex-parte award and order sheets for filing an application under Order 9 Rule 13 of CPC immediately after getting the knowledge of passing of award against him. Even he had not offered any explanation with regard to the period from 7.7.2007 to 1.10.2007, which was necessary in the facts and circumstances of the case. The appellant has utterly failed to show any sufficient cause for not filing the application under Order 9 Rule 13 CPC within the period of limitation of 30 days after getting the knowledge of award dated 4.1.2007 i.e. from 7.7.2007. He in fact pleaded false plea of getting knowledge only on 1.10.2007. The power of condoning the delay by the Court is a discretionary relief and in the facts and circumstances of

case when the appellant has not pleaded correct facts in the application for condonation of delay rather made false pleadings with respect to the date of knowledge, the appellant cannot be granted such discretionary relief which the learned Claims Tribunal has rightly refused.

14. Apart from above, this Court has also perused the record of the original claim application wherein the record of criminal case is also available on record. In the seizure memo of RC book of the offending vehicle i.e. CG07-ZD-5978, name of the appellant has been shown to be the owner. Further, from perusal of the judgment passed in criminal case bearing No.344/06 dated 26.6.2006 it is clear that the appellant has admitted guilt of charge under Section 279 of IPC and Section 146/196 of the Act, 1988.

15. In view of the above and considering the totality of the facts and circumstances of the case, this Court is of the view that the Claims Tribunal has not committed any error or illegality in rejecting the application for condonation of delay and consequently dismissing the application under Order 9 Rule 13 of CPC seeking setting aside of ex-parte award dated 4.1.2007.

16. In the result, the appeal has no substance, the same is liable to be dismissed and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-