

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 337 OF 2017
IN
STAMP NUMBER MAIN NO. 847 OF 2017****BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD., THR. ITS AUT. SIG.,
NILESH GANDHI,****... Applicant****Versus****USHA KIRAN SAI KULKARNI AND 2
ORS.,****... Respondents**

Mr. Narayan Dattaram Govekar, Advocate for the Applicant.

Mr. K. Pednekar, Advocate for the Respondent No.1.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 18th January 2018.

Oral Order:

The applicant has challenged an award passed by the Member of the Motor Claims Tribunal dated 9/8/2016 wherein an application for condonation of delay of 117 days has occasioned.

2. Heard the learned counsel for the applicant. The applicant is a insurer before the Claims Tribunal. It is submitted on behalf of the applicant that after the award, an application for certified copy was made on 11/8/2016 which was ready on 22/8/2016 and was delivered on 29/8/2016. After securing the copy of the impugned judgment and award, the advocate

representing the applicant forwarded the same along with the original file to the local office on 9/9/2016. Thereafter the papers were forwarded to the Regional Office at Mumbai on 28/9/2016 and after receiving those papers from Mumbai on 7/11/2016, the applicant decided to prefer an appeal.

3. In short, it is the contention of the applicant that it being the claim of high value, the case papers had to go to different level of process at the head office and it takes considerable time for discussion and therefore some delay has occurred which is not at all mala fide and in fact is bona fide one.

4. The period of limitation is 90 days, however, a delay of 117 days has caused in filing the appeal because of the aforesaid reasons. The learned counsel for the applicant has placed reliance on the judgment of the Supreme Court in the case of **Indian Oil Corporation Ltd. & Others Vs. Subrata Borah Chowlek, etc.** (2010) Lawsuit (SC) 1220.

5. Per contra, the learned counsel appearing for the respondents strongly objected the application for condonation of delay by stating that no sufficient cause has been shown by the applicant, more particularly, the period which started running after receiving the certified copy till the papers were sent to the Head Office at Mumbai. It is also contended that there are no particular

details as to the different levels of processes through which the papers had to travel as contended by the applicant. It is finally submitted that if delay is condoned it will result in miscarriage of justice and would cause irreparable loss to the respondents.

6. I have heard the respective learned counsel for the parties but at the outset it has been time and again observed by the various judgments of the Hon'ble Supreme Court and this Court that while entertaining applications for condonation of delay, the expression “sufficient cause” should be liberally construed with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. It is also inter alia observed in the judgment of **Indian Oil Corporation Ltd. (supra)** that the factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. No doubt, in the instant case, the applicant which is an Insurance Company will have to be given some benefit as looking to the nature of the functioning of the office of the applicant, the file had to travel to different levels in order to take the decision as to whether the appeal would be preferred or otherwise.

7. The learned counsel for the respondent on the other hand placed

reliance on the judgment of this Court in the case of **Special Land Acquisition Officer and Anr. Vs. Jose Prazeres de Piedade Pinto and others** (2006) (2) Bom.CR 773. It would be apposite to quote para 8 of the judgment which reads thus:

“8. Perusal of the records and particularly the memo of appeal as well as the application for condonation of delay nowhere disclose as to what prevented the applicants from filing the application for condonation of delay along with the memo of the appeal. It is also pertinent to note that though there was a delay of 281 days in filing the appeal, the calculation of the delay was not properly done by the applicants. It was sought to be presented as if there was delay of 230 days. Undoubtedly, this difference in the number of days though may not be sufficient to consider the issue relating to sufficiency of the cause, it *per se* discloses total carefree attitude and failure to observe minimum required discipline by the concerned officer as well as duties towards the Court in rendering proper assistance to arrive at just and appropriate decision on the matter in issue and that too in a situation where a party expects the Court to exercise its discretion in its favour on the basis of the materials placed before the Court.”

8. Having taken in account the ratio laid down by this Court as well as by the Hon'ble Supreme Court in the case of **Indian Oil Corporation Ltd & Others (supra)** it would be just and proper to condone the delay in order to

decide the appeal on merits instead of going into the technicalities. Nevertheless, the applicant would have to be saddled with some costs for causing delay. Consequently the application is allowed and the delay of 117 days is hereby condoned subject to cost of Rs.4000/- (Rupees four thousand only) to be paid by the applicant to the respondents. The payment of costs is condition precedent to the condonation of delay. After the delay is condoned the office to register the appeal. The application stands disposed off in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

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