

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION NO. 925 OF 2017
IN
STAMP NUMBER MAIN NO. 4178 OF 2016

United India Insurance Co. Ltd.
Rep. Thr. It's Divisional Manager ... Applicant
Versus
Chaya V. Faldessai @ Chaia Dessai
& 2 Ors. ... Respondents

Shri Suraj R. Naik, Advocate for the Applicant.

Shri Adish V. Halarnkar, Advocate for the Respondent Nos. 1 and 2.

CORAM:- C.V. BHADANG, J.

DATE:- 21st MARCH, 2018

ORAL ORDER:

This is an application for condonation of delay in filing an Appeal, challenging the award of the Claims Tribunal. The record shows that the impugned award was passed on 31.10.2015. The certified copy was applied for on 02.11.2015 and was received on 27.11.2015. The appeal however came to be filed on 23.12.2016 i.e. after a period of more than one year, along with an application for condonation of delay. In such circumstances, the applicant is expected to explain the delay from 27.11.2015 i.e. from the date on which the certified copy was received, till the date on which the appeal along with the application for condonation of

delay was filed. The only explanation for the delay for this period is that the proposal for approval was sent to the Regional Office at Chennai on 12.12.2015 and the necessary approval was received on 06.12.2016. Except this, there is no explanation forthcoming as to what were the circumstances that prevented the applicant from filing the appeal within time. The applicant cannot get away saying that the delay was caused at the Regional Office, inasmuch as the applicant-Insurance Company is an entity as a whole and is expected to explain the delay at all levels. This is a case where no proper explanation is forthcoming, for the delay for the period from the receipt of the certified copy, till the date on which the appeal along with the application for condonation of delay was filed, except that, the proposal was lying with the Regional Office.

2. The Hon'ble Supreme Court in the case of **State of Uttar Pradesh Vs. Amar Nath Yadav, (2014) 2 SCC 422** had refused to condone the delay for the reason that the delay was attributed to the moving of the file from one department/officer to another. The Hon'ble Supreme Court in the said case has taken note of it's earlier decision in the case of **Postmaster General & Others Vs. Living Media India Limited & Another, (2012) 3 SCC 563**, in which it is held thus:

“It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the

prescribed period of limitation for taking up the matter by way of filing a Special Leave Petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with Court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for process. The government departments are under a special obligation to ensure that they perform their duties with diligence and

commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

3. The facts in the present case are similar, if not identical, where the applicant-Insurance Company is possessed with competent persons familiar with Court proceedings, who can assist the offices. In the absence of proper explanation, the delay cannot be condoned mechanically.

4. The Hon'ble Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, (2013) 12 SCC 649**, after taking survey of various decisions holding the field has culled out the principles, applicable in such a case. It has been *inter-alia* held that a liberal view may be taken in respect of delay of short duration, however, a case of gross or

inordinate/substantial delay needs to be strictly dealt with. Although a 'acceptable latitude' may be shown in favour of State or a public body or an entity representing a collective cause, the public body cannot claim special privilege in the matter of condonation of delay. It has to be shown that the party seeking condonation of delay has acted with due diligence and/or was prevented by circumstances beyond its control, from filing the appeal within time.

5. Thus, considering the overall circumstances, I do not find that the applicant has made out 'sufficient cause', for condonation of delay. The application is accordingly dismissed. Registration of Stamp No. 4178/2016 is hereby refused.

The amount deposited by the applicant before this Court, along with interest, if any, shall be paid to the respondent nos. 1 and 2, after a period of eight weeks.

C.V. BHADANG, J.

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