

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.4219 OF 2014
IN
FIRST APPEAL (STAMP) NO.31546 OF 2013**

Ratansinh Sampatrao Jadhav & Anr. ...Applicants
Versus
Vijaya Suryaji chavan and Ors. ...Respondents

.....

Mr. Vaibhav Gaikwad, i/b. Mr. H.S. Venegaonkar for the Applicant.
Mr. Kirankumar Phakade for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st MARCH, 2018.

P.C.:-

By this application, the Applicants herein have sought to condone the delay of 1195 days in filing the first appeal against the award dated 12.5.2010 of M.A.C.T., Satara in M.A.C.P No.40 of 2008.

2. Heard Mr. Vaibhav Gaikwad for the Applicant. He has submitted that the Applicants are illiterate persons and that they had engaged an advocate to appear before the Motor Accident Claims Tribunal. He has submitted that the Applicants were not aware that the Advocate on record did not appear on their behalf. He submits that due to the negligence of the advocate an ex parte award came to be passed in favour of these Applicants. The learned counsel for the

Applicants submits that the Applicants learnt about the impugned judgment in the year 2012 and immediately thereafter they took steps to file the appeal. He has submitted that the delay was bonafide and genuine and that the Applicants have a good case on merits. He therefore submits that the delay in filing the appeal should be condoned.

3. Mr. Kirankumar Phakade, the learned counsel for the Respondents contends that the Applicants had not contested the proceedings despite due service. He has submitted that the averments made in the application indicate that the Applicants were aware of the impugned award in the year 2010. He submits that the appeal was filed in November, 2012 and that the Applicants have not explained the delay in filing the appeal. He submits that no sufficient grounds are made out and that the application for condonation of delay is liable to be dismissed.

4. Perused the records and considered the submissions advanced by the learned counsels for the respective parties. The records reveal that the Respondent Nos.1 to 3 being his widow and children of Suryaji Chavan, who had expired in a motor vehicular

accident, had filed a Petition under Section 166 of the Motor Vehicles Act, 1988. The records further reveal that the Applicants had not appeared despite being duly served. The matter therefore proceeded ex-parte against the Applicants herein. The claimants and the Insurance company adduced evidence. Upon considering the evidence, the learned Chairman of the Motor Accident Claims Tribunal, Satara, held that the claimants are entitled for compensation of Rs.3,30,000/-. The Tribunal further held that in view of breach of terms and conditions of the policy, the Insurance Company is not liable to pay the compensation, hence, by judgment and award dated 12.5.2010 the Tribunal ordered the Applicants herein to pay compensation of Rs.3,30,000/- alongwith interest @ Rs.6% p.a.

5. The Applicants have sought to challenge the said judgment after a period of over three years. The only explanation rendered by the Applicants is the negligence of his advocate. The Applicants state that they are illiterate and having engaged a lawyer to represent them, they did not appear before Tribunal.

6. It is true that the term “sufficient ground” needs to be construed liberally and the litigants should not be generally penalised

for the mistake or the negligence of their advocate. However, this cannot be applied as a general principle. At this stage, it would also be advantageous to refer to the decision in ***G. Ramegowda, Major, Etc vs Special Land Acquisition, 1988 AIR 897*** wherein the Apex Court has held that:-

“There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”

7. In ***Balwant Singh (Dead) vs Jagdish Singh & Ors. AIR 2010 S.C. 3043***, the Apex Court referred to the pronouncement in ***Union of India v. Ram Charan, 1964 AIR 215, P.K. Ramchandran v. State of Kerala, (1977) 7 SCC 556*** and ***Katari Suryanarayana v. Koppiseti Subba Rao, 2009 (11) SCC 183*** and stated thus:-

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general

connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

8. In *Esha Bhattacharjee vs Mg.Commit.Of Raghunathpur Nafar*, (2013) 12 SCC 649, the Apex Court after considering the previous pronouncements on the issue has held thus :

15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and

uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

9. In the instant case, the widow and the children of Suryaji had filed a claim petition in the year 2008. Despite due service the Applicants did not contest the proceedings. The award was passed in the year-2010 and in view of non compliance of the award, the claimants were forced to file execution application. Even if the ground of negligence of the advocate is accepted, the averments made in paragraph 8 of the application clearly indicate that the Applicants

herein had learnt about the judgment in the year October-2012. He had applied for certified copy on 9.10.2012 and the same was furnished to him on 12.10.2012. The records reveal that appeal was affirmed on 13.2.2013 however the same was filed only in the month of November, 2013 i.e. after a period of over one year from the date of knowledge of the impugned judgment. The Applicants have not explained the inordinate delay in filing the first appeal. It is to be noted that the Respondent Nos.1 to 3-original claimants are the victims of accident and since last ten years they have not been able to enjoy the fruits of the award. Suffice to say that the gross negligence on the part of the Applicants cannot be condoned and a valuable right accrued in favour of the Respondent Nos.1 to 3- original claimants cannot be taken away on such casual grounds.

10. In the light of above facts and circumstances, in my considered view the delay cannot be condoned. The application has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)