

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

I.A.No.1 of 2017
in/and
C.M.A. No.1270 of 2017

ORDER :

This petition is filed to condone delay of 1115 days in preferring appeal against the order dated 07.08.2014 in O.A (IIU) No.143 of 2009 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the Tribunal dismissed the claim application filed by the petitioners-applicants seeking to grant compensation for death of their son Shake Nagur (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from running train No.2840 Chennai Howrah Mail in the intervening night of 09/10.01.2009.

2. Heard both sides. Perused the record.

3. The learned counsel for the applicants would submit that the applicants handed over the case to Mr. K.S.N.Murthy, Advocate to file the appeal, and that the said counsel and the counsel before the Tribunal informed that the appeal was filed; that when the applicants approached their counsel before the Tribunal in October, 2017, he then informed that the appeal was not filed and that their file was misplaced and steps were being taken to get entire material; that it was due to misplacement of file in the office of the counsel; that after coming to know about the said fact, the applicants took steps immediately for obtaining material; that the delay is neither intentional nor wanton, and ultimately, prayed to condone the delay.

4. On the other hand, the learned counsel for the railways would contend that there is abnormal delay of

1115 days in filing the appeal; that there is no sufficient cause to condone the delay; that no documents are filed to substantiate the grounds put forth in the affidavit accompanying the petition; and ultimately prayed to dismiss the petition.

5. In view of the submissions made by both the sides, the point for consideration is whether there is sufficient cause to condone delay of 1115 days in filing the present appeal ?

6. The word 'sufficient cause' is not defined under the Limitation Act, 1963. It means a cause which is beyond the control of the party invoking the aid of the said provision. The Tribunal dismissed the claim application in O.A.(IIU) No.143 of 2009 filed by the applicants vide its order dated 07.08.2014. There is delay of 1115 days in filing the present appeal against the said order passed by the Tribunal. The reason assigned is that after disposal of the claim application before the Tribunal, the applicants handed over the case to Mr. K.S.N.Murthy, Advocate to file the appeal, and the said counsel and the counsel before the Tribunal informed that the appeal was filed, but when the applicants approached their counsel before the Tribunal in October, 2017, he then informed that the appeal was not filed and that their file was misplaced and steps were being taken to get entire material. It is further stated that due to misplacement of file in the office of the counsel, the appeal could not be filed in time and that after coming to know about the said fact, the applicants took steps immediately for obtaining material and got filed the present appeal. Except the self-serving statement of applicant no.1, there is no other record to substantiate the case. If really the said K.S.N.Murthy, Advocate was entrusted with the material

papers and he did not file the appeal, the applicants have a right to lodge complaint to the authorities concerned. No such complaint is filed. Further, the applicants waited for more than 3 years to find out that no appeal was filed against the order of the Tribunal. They were not diligent in prosecuting the case. Under the circumstances, it is difficult to believe the averments of the application to condone the delay. No cause, much less sufficient cause, is made out to condone the delay. The petition is devoid of merit and is liable to be dismissed.

7. In the result, the petition is dismissed. No costs. Consequently, C.M.A. No.1270 of 2017 stands rejected.

06.12.2018
DRK

Dr. SHAMEEM AKTHER, J



THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



06.12.2018