

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-:-

FAO No. 2328 of 2016 (O&M)

Date of decision: 18.09.2018

Haniffa & Ors.

... Appellants

Vs.

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Lalit Kumar, Advocate, for
Mr. Johan Kumar, Advocate, for the the appellants.

Mr. Karminster Singh, Advocate, for the respondent.

G.S.SANDHAWALIA, J. (Oral)

C.M No. 8424-CII of 2016

Application for condonation of delay of 160 days in refiling the appeal is preferred.

After hearing counsel for the parties and in view of the averments made in the application, the same is allowed and delay of 160 days in refiling the appeal is condoned.

C.M stands disposed of.

**C.M No. 8425-CII of 2016 in/and
FAO No. 2328 of 2016**

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') barred by 288 days is directed against the order dated 05/06.05.2014 of the Railway Claims Tribunal, Chandigarh Bench (for short, 'the Tribunal'), whereby the Tribunal has dismissed the application filed under Section 17(2) of the Act for condonation of delay of 1368 days in filing the appeal on the ground that

the delay is inordinate and neither it has been correctly calculated nor explained properly and beyond the period of one year of limitation.

It was also noticed that the deceased – Sahid Ahmed had a major son also who could have looked after the family and file the case within the period of limitation. The claim was only filed on 01.10.2013, though the death had taken place on 29.04.2008. Along with the claim petition an application for delay was also filed under Section 17(2) of the Act. The averments were made in the application were that the complainants were under depression due to death of Sahid and were not aware about Railway Claims Tribunal and their right to claim and documents were not available with the claimants and resultantly they sought condonation of delay. But the application was opposed by the respondents on the ground that no supporting medical document regarding depression has been placed on record and that no details have been given that claimants were not aware of their rights as such.

For condonation of delay, sufficient cause would have to be made out as such under Section 17(2) of the Act as the claim petition has admittedly to be filed within one year from the date of the accident though Section 17(2) provides that an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.

The noted facts would have to go on to show that there is no such sufficient cause which has been mentioned on account of delay over four years which has occurred in the filing of the claim petition. The

Tribunal was right in noticing that there was another male member in the family apart from the wife of the deceased. Therefore in the absence of sufficient cause in the light as such the appellants right to claim become, barred. The delay as such is not nominal which could be condoned at the asking but is substantial and the respondents would also be equally handicapped in leading the defence after considerable period of five years which had lapsed. The principles laid down in the judgment of the Apex Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. 2013 (12) SCC 649** are also not satisfied in the facts and circumstances of the present case, which are as under:-

“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-challan manner requires to be curbed, of course, within legal parameters.”

Resultantly, this Court is of the opinion that the reasons which have been mentioned by the Tribunal in dismissing the application for condonation of delay do not require any interference.

Accordingly, the application for condonation of delay of 288 days in filing the appeal as well as the appeal is dismissed on the grounds of limitation and on merits.

September 18, 2018
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(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No