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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.1163 of 2017 (O&M)
Date of Decision : 11.12.2018**

Smt. Mathlesh and others

Appellants

Versus

Gulab Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gautam Kailey, Advocate
for the appellants.

AVNEESH JHINGAN, J (Oral):

This is an appeal against award dated 17.03.2009 passed by the Motor Accident Claims Tribunal, Jagadhri. The appeal has been accompanied by an application filed under Section 5 of the Limitation Act, 1963 for condoning the delay of 2623 days in filing the appeal.

The facts in brief are that a motor vehicular accident took place on 20.06.2006 wherein Ram Avtar @ Dara lost his life. The accident was caused due to rash and negligent driving of TATA-407 bearing registration No. HR-64-0027. The Tribunal awarded a sum of ₹4,15,000/- alongwith interest @ 7.5% per annum. The present appeal has been filed for enhancement of compensation.

In the application for condonation of delay, it has been stated that the delay occurred as the applicants gave all the documents to the counsel before the Tribunal and he engaged an Advocate for them. The applicants were told that their appeal has been admitted and it will take long time. It is stated that the counsel before the Tribunal had not given any card or address of the counsel who was engaged for filing the appeal. Thereafter, in December 2015, applicants approached the counsel, but he could not give any satisfactory answer. Thereafter, certified copy of the award was obtained and present appeal was filed.

Learned counsel for the applicants-appellants argues that a liberal approach may be adopted by the Court for condoning the delay.

The Counsel argues that the applicants-appellants had approached the counsel who ensured them that the appeal has been filed, hence, the delay has occurred.

The explanation put forth for condonation of delay is not satisfactory. The award was passed on 17.03.2009. During the course of arguments, the counsel fairly stated that the claimants got the awarded compensation in approximate period of six months from the date of passing of the award i.e. in 2009 itself. While explaining the delay, the applicants have not mentioned the name of the Advocate to whom they approached for filing the appeal. No name has been put forth of the Counsel who had to file the appeal. There is nothing on record to show that from 2009 to 2015, the applicants

took any step to ensure that the appeal has been filed, even copy of the appeal was not asked from the counsel. The application is vague as to what reply was given by their counsel in December 2015, which necessitated them to approach another counsel to verify the status of their appeal. A liberal approach for condoning the delay is to be adopted where the period of delay is short. In the present case, there is an inordinate delay. The delay will prejudice the rights of the respondents.

The Supreme Court in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459**, held as under :-

“8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach

where the delay is inordinate.”

In the above decision, it has been held that explanation of “sufficient cause” will depend upon the facts of the case. If no satisfactory explanation is coming forth, delay should not be condoned.

Further the Supreme Court in **Pundlik Jalam Patil (D) by LRs. Versus Exe. Eng. Jalgaon Medium Project and another, 2008 (17) SCC 448,** has held as under:

“..... It was its duty to prefer appeals before the Court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights.’”

It was further noticed by the Supreme Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient

cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."

The Supreme Court in case of **Tribhuvanshankar Vs. Amrutlal, 2014 (1) RCR (Civil) 206,** has laid down that the fundamental policy behind the limitation is that if a person does not pursue his remedy within the stipulated time-frame, the right to sue gets extinguished.

In case of **Amalendu Kumar Bera and others Versus The State of West Bengal 2013 (2) RCR (Civil) 534,** the Supreme Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned. In case of serious negligence, the delay should not be condoned.

The Supreme Court in **State of Nagaland v. Lipok Ao, 2012 (3) RCR (Civil) 73: 2012 (2) Recent Apex Judgments (RAJ) 482: 2012 (5) SCC 157,** in paragraph 24 has held as under:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

The Supreme Court in case **Basawaraj and another v. Special Land Acquisition Officer 2017(3) PLR 299**, while dealing with the scope of "sufficient cause" has laid down as under:

".....The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

In **P.K. Ramachandran v. State of Kerala & Anr., 1997(4) R.C.R.(Civil) 242 : AIR 1998 SC 2276**, the Supreme Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under :-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

A Division Bench of this Court in case of **Municipal Committee (now Municipal Corporation), Bathinda Vs. Bachan Singh through his LRs and another, 2017 (3) R.C.R. (Civil) 145 (P&H) (DB)**, while refusing to condone the delay of 1760 days, as the explanation was not satisfactory, held as under :-

"10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 1760 days in filing and 85 days in refiling the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of

fact to be considered taking totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The learned Single Judge decided the matter on 11.5.2011 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellant has filed the appeal on 5.4.2016 and refiled on 10.8.2016, after a colossal delay of 1760 days. The explanation of the appellant praying for condonation of delay in filing and refiling the appeal, as noticed hereinabove, is bereft of sufficient cause for delay caused in filing the appeal. Moreover, even after the judgment dated 26.11.2014 was passed accepting the appeal against the judgment on the basis of which order was passed in the present case, the Letter Patent Appeal was filed on 5.4.2016, i.e., after about one year and four months. There is no satisfactory explanation for this delay as well. The Government department is supposed to pursue its litigation with due diligence. A stale matter cannot be revived by approaching the Court belatedly.

11. In view of the above, finding no merit in the applications for condonation of 1760 days' delay in filing and 85 days' in refiling the appeal, the same are hereby dismissed and consequently, the appeal is dismissed as time barred."

From the perusal of the above decision, it is evident that there has to be a satisfactory explanation put forth for condonation of delay.

In the present case, there is no explanation or much less satisfactory explanation for condonation of delay.

In view of the facts noted above and law discussed, no ground is made out for condoning the delay.

The application is dismissed and as a result thereof, the

appeal is also dismissed being time barred.

[AVNEESH JHINGAN]
JUDGE

December 11th, 2018

pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No