

In the High Court of Punjab and Haryana at Chandigarh

**FAO-7002 of 2018(O&M)
Date of Decision: 27.11.2018**

M/s Sidhi Vinayak Enterprises

---Appellant

versus

Bindu Bala and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sandeep Bansal, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against order dated 6.1.2015 passed by the Commissioner under the Employees' Compensation Act, 1923 (in short "the Act") whereby compensation has been assessed on account of death of Suresh Kumar in an occurrence dated 4.12.2013 during the course of employment with the appellant as Munim at its Cement Dump.

Along with the appeal, applications have been filed for condoning delay of 1242 days in filing and 22 days in refiling the appeal.

Counsel for the applicant-appellant would urge that delay in filing the appeal is neither intentional nor mala fide. It is argued that the appellant had moved application dated 24.7.2015 for setting aside ex parte order dated 6.1.2015 but the said application has not been decided as was

orally told by counsel for the applicant before the court below. He would further submit that Hon'ble the Supreme Court in **State of Nagaland vs. Lipok A O and others 2005(2) RCR (Civil) 375** while dealing with the question of condonation of delay has laid down the following principles:-

1. Whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case.
2. Courts should be liberal in condoning delay - Expression “every day's delay must be explained” does not mean that a pedantic approach should be made.
3. Unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.
4. Mistake of counsel by itself is always sufficient cause for condonation of delay - It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose.
5. If the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.
6. Expression “sufficient cause” is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice- that being the life-purposes for the existence of the institution of courts.
7. Court should not adopt an injustice oriented approach in

rejecting the application for condonation of delay.”

He has prayed that a lenient view may be taken and appeal may be decided on merits after notice to the contesting party.

Before adverting to the submissions made by counsel for the applicant-appellant, it is pertinent to mention that the applicant has filed an application under Section 30 of the Act read with Section 151 of the Code of Civil Procedure for exemption from deposit of awarded amount. There is no provision under Section 30 of the Act which confers jurisdiction upon the appellate court to exempt an alleged employer from depositing the awarded amount for maintaining an appeal against order passed by the Commissioner in exercise of jurisdiction under the Act. That being so, the application seeking exemption from deposit of awarded amount is liable to be dismissed and ordered accordingly.

As the applicant-appellant is not willing to deposit the awarded amount in compliance with statutory requirement of Section 30 of the Act, neither the applicant can press its application for condonation of delay to be decided on merits much less to get any relief in the present proceedings.

This brings the court to the application for condoning huge delay of 1242 days in filing the appeal.

A relevant extract from para 2 of the application containing averments with regard to there being sufficient cause for condonation of delay, reads as follows:-

“That the impugned order in the main case was passed on 6.1.2015 ex parte. The appellant moved an application for setting aside ex parte judgment dated 6.1.2015 vide application dated 24.7.2015. Reply was filed by

respondents. However, thereafter as told the clerk of counsel in court below that the applicant need not come present on all dates of hearing. Meanwhile, the Appellant Firm had some partnership problems and the one of the partners was changed and fresh partnership firm was constituted. The applicant had contacted the clerk of his counsel at Hoshiarpur to know about the decision of the case and he assured that when ever the case is decided, he will apply for a certified copy and deliver the same to them as and when the same is ready. However, despite contacting him in July 2018, no decision was conveyed or any copy was delivered. However, after the applicant received fresh summons of execution for appearance on 7.8.2018, he contacted his counsel and was orally told that even the application for setting aside ex parte judgment has not been decided. After arranging funds, the applicant contacted his present counsel at Chandigarh and is filing the appeal in the shortest possible time after getting copy. The applicant, thus could not contact his counsel at Chandigarh in time to file the appeal.”

A plain but careful reading of the aforesaid extract makes it apparent that no explanation has been given in the application much less to make out a case that there is sufficient cause for condoning inordinate delay of more than 3 years in filing the appeal when admittedly, application for setting aside ex parte order dated 6.1.2015 was filed in July 2015. On the

contrary, if plea of the applicant for condoning delay on such vague allegations is allowed and that too in the given circumstances that the applicant has not deposited the awarded amount in terms of Section 30 of the Act and the claimants have been deprived of compensation since the year 2013, it would be travesty of justice against the respondents-claimants. In this view of the matter, the applicant can not derive any advantage to its contention from the judgment in **State of Nagaland's case (supra)**.

For the foregoing reasons, the application for condonation of delay in filing the appeal is dismissed. As a natural corollary, the appeal is dismissed being barred by limitation. As application for condonation of delay in filing the appeal has been dismissed, application for condonation of delay in refiling the appeal is rendered to be of academic relevance.

(Rekha Mittal)
Judge

27.11.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No