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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

933 CIVIL APPLICATION NO.1756 OF 2019
IN FAST/2302/2019

NEW INDIA ASSURANCE CO. LTD., THROUGH ITS AUTHORIZED
SIGNATORY, AURANGABAD

VERSUS

PARASHRAM ANANDA PARKALE AND ANOTHER

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Advocate for Applicant : Shri Deshmukh Mohit R.

Advocate for Respondent no.1 : Shri R. B. Dhakane

Respondent no.2 served.

CORAM: V.L. ACHLIYA, J.

DATE: 16.04.2019

PER COURT :

1] The applicant has moved this application for condonation of delay of 168 days in filing appeal for the reasons set out in detail in the application.

2] Heard learned counsel for the applicant / appellant and the respondent no.1. Respondent no.2, though served, is absent.

3] In brief, it is the contention of learned counsel for the applicant that the delay caused in filing appeal cannot be termed as intentional or deliberate. By referring the facts pleaded in the application, the

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learned counsel submits that immediately after the award was passed by the Commissioner for Workmen's Compensation, steps were taken to file the appeal. The award was passed on 24.4.2018. The application for certified copy was made on 2.5.2018 and copies were received on 14.7.2018. Since the applicant / appellant is a public body, decision to file appeal is to be taken at the higher level by the authority vested with the powers to scrutinize the proposal and approve the same. Accordingly, the proposal for filing appeal was sent to office of Insurance Company at Nashik as per the procedure set out and then the matter was referred for legal opinion of the Advocate on the panel of the Insurance Company. Opinion was received on 4.9.29018. During scrutiny of the proposal, it was revealed that the respondent no.2 i.e. the owner of the vehicle has submitted the claim seeking own damages property claim arising out of same accident. In the claim form and other documents, the claimant / insured has disclosed that the vehicle in question was entrusted to the respondent no.1 as a relative and not as a driver employed by insured. It was noticed that the stand taken

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by the insured before the Commissioner for Workmen's Compensation and disclosure made in claim form and the documents submitted seeking own damages property claim, were contradictory. During scrutiny of proposal, it was revealed that the respondent no.1 was never employed as a driver by the respondent no.2 at the relevant time of accident and there was no employer and employee relationship exist between the respondent no.2 and the insured. So also it was revealed that the claim made by the respondent no.1 before the Commissioner for Workmen's Compensation was made by making false averments and by joining hands with the owner / insured of the vehicle. Accordingly, the decision was taken to file appeal. In the process, the delay of 168 days has been caused in filing the appeal. It is submitted that the applicant has presented an appeal alongwith application seeking permission to lead additional evidence in view of the facts revealed subsequent to decision in the case. In this background, learned counsel submits that the delay has been properly explained and same deserves to be condoned. It is further submitted that in case delay is not condoned, serious prejudice would be caused to

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applicant / appellant – Insurance Company. On the other hand, if delay is condoned, no serious prejudice would be caused to the respondents as ultimately the case will be decided on its own merits.

4] On the other hand, the respondent no.1 has opposed the application with contention that the cause assigned for condonation of delay cannot be termed as "sufficient cause" within the meaning of Section 5 of the Indian Limitation Act. It is further submitted that the delay though shown to be 168 days, but actual delay is of 245 days. By referring to overall facts of the case, the learned counsel submits that the reasons assigned for condonation of delay cannot be termed as sufficient cause to condone the delay. It is submitted that the delay is inordinate and the lapses on the part of officials of the appellant – Insurance Company to raise proper defence at proper stage cannot be treated as reason to condone the delay.

5] On due consideration of the submissions advanced in the light of cause assigned for condoning the delay, I am of the view that the delay has been properly explained on the part of the applicant and same can be treated as

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"sufficient cause" to condone the delay. The delay caused in filing appeal cannot be said to be inordinate delay. The discovery of facts subsequent to passing of impugned order may primarily be the reason for filing an appeal. It is a well settled position in law that while dealing with an application seeking condonation of delay, the Courts are expected to adopt liberal and pragmatic approach. It is also equally settled that the term "sufficient cause" should be understood in its proper spirit, philosophy and expected to be interpreted in a more liberal manner in a given fact situation of the case. The substantial justice always to be kept as paramount consideration and to be given overriding effect over technical consideration. While dealing with an application seeking condonation of delay filed by the Government or public body or an entity, they are expected to be shown some more latitude while interpreting the term "sufficient cause".

6] In the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013)12 SCC 649, the Apex Court after taking survey of precedents of law on the issue culled out

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following principles to be kept in mind while dealing with an application seeking condonation of delay :-

"21. From the aforesaid authorities the principles that can broadly be culled out are :21.1. (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 legalize injustice but are obliged to remove injustice.

21.2 (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.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (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.

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

21.6 (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.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it

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cannot be allowed a totally unfettered free play.

21.8 (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.

21.8 (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.

21.9 (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 others unnecessarily to face such a litigation.

21.10 (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.

21.11 (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.

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

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

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2. (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.

22.3 (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.

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

7] Thus, examining the facts of the case in the light of broad principles laid down in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others*, I am of the view that the delay deserves to be condoned. If delay is condoned, no

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serious prejudice would be caused to the respondents as ultimately the case would be decided on its own merits. If delay is not condoned, there is every possibility that a meritorious matter may be rejected for technical reasons. I am, therefore, inclined to allow the application.

8] Accordingly, the application is allowed in terms of prayer clause (B). Delay condoned. Appeal be registered and placed for admission on 4.7.2019.

9] Shri R. B. Dhakane, learned counsel waives service of notice for the respondent no.1.

10] Notice of appeal be issued to the respondent no.2.

11] Call R & P.

12] Put up with R & P.

(V.L. ACHLIYA, J.)