

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 1026/2018
in
First Appeal (ST) No. 18346/2017

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. N. D. Pandey I/b. Kuldeep Singh for the Applicant	

CORAM : K.K.TATED, J.
DATED : APRIL 25, 2019

P.C.

Heard. This Application is for condonation of 806 days delay in preferring the appeal challenging the judgment and award dated 15.12.2014 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai in Claim Petition No.OA No.414/2008.

2 The learned counsel for the Applicant submits that because of illiteracy and the financial difficulty it remained on the part of the Applicant to file the First Appeal immediately. In support of this contention, the learned counsel for the Applicant relies on paragraph 4 of the Civil Application,

which reads thus:

“4. That the Appellants are illiterate and very poor persons are suffering destitution and starvation. Because of being related to very poor strata of the society could not make arrangement for filing the First Appeal in this Hon'ble Court. That the Appellants case is based upon sound merits, there is likelihood of them succeeding on getting an opportunity of being heard.”

3 The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay of 800 days in filing the First Appeal. He submits that the Applicant has good chance of success.

4 It is to be noted that in the present proceedings there is delay of 800 days in filing the First Appeal. The reasons given by the Applicant about the financial difficulty cannot be a ground for condonation of delay.

5 It is to be noted that in the matter of ***Mahant Gurmukh Singh Vs. The State of Punjab & Ors. AIR 1970 Punjab & Haryana 262 (Full Bench)*** it is held that the non availability of the amount for obtaining copy of judgment prepared cannot be a ground for condonation of delay.

Paragraph 4, thereof reads thus:

4. Counsel then submitted that we should extend the time for filing the application under Article 133 of the Constitution up to September 20, 1968, by holding that the applicant was prevented by sufficient cause from filing it any earlier. The only cause which is mentioned in the miscellaneous application is expressed in the following words:-

"That as the charges of the certified copy were more than Rs. 200/-, the petitioner was not able to arrange such a big amount and could only get the copy on August 27, 1968, and the petitioner deserves to be allowed time from the date of application till the date of delivery and if this time is allowed, then the application is within time."

The above quoted averment in the miscellaneous application does not really amount to an explanation for the delay, but is a plea in support of the first submission made by counsel. Even otherwise, we are unable to hold that if an applicant is not able to collect a certified copy for about three months after it is ready to his knowledge because he had to arrange for money to pay the costs of the copy, it would amount to a sufficient cause for delay in filing the petition within the meaning of Section 5 of the Limitation Act. A Division Bench of this Court consisting of Dutt, J. and my Lord P. C. Pandit, J. held in Punjab State Vs. Gopal Singh AIR 1964 Punj 154, that whether the appellant happens to be the State Government and the reason given out for the delay in filing an appeal was that the delay had occurred because on the last day of the limitation, the appellant discovered that it did not have sufficient money to buy the

necessary court-fee, but no explanation is forthcoming as to why such state of affairs was allowed to come into existence, the appellant is not entitled to the benefit of Section 5. Though in that case the Government official concerned could not necessarily be expected to pay the money required for court-fee from his pocket, and no latitude was allowed to the Government as no explanation was given for not putting the official concerned in funds within time,, the position is worse in the present case.

Mere non-availability of funds for obtaining the requisite certified copy is, in our opinion, no ground for the extension of time under Section 5 of the Limitation. Act. Once it is found that the Supreme Court Application was barred by time, the petitioner has also to explain as to what prevented him from filing the application for leave to appeal to the Supreme Court even after obtaining the certified copy of the judgment on August 27, 1968, till he actually filed it on September 20, 1968. Even a purported explanation for this delay is not forthcoming in the application of the petitioner or the affidavit supporting it. We are, therefore, unable to allow the application under Section 5 of the Limitation Act as there is no valid ground whatever for extending the time under that provision of law.”

The Supreme Court, in the matter of ***Banarsidas & Ors. Vs. State of Uttar Pradesh & Ors. 1956 SC 520*** held that the financial constraint cannot be a ground for condonation of delay. Paragraph 6 thereof reads thus:

6. *After moving this Court under*

article 32 of the Constitution, most of the petitioners and many others, in all 1,352 in number, also made an application for special leave to appeal (being Special Leave Petition No. 426 of 1955) from the judgment and orders of the High Court of Judicature at Allahabad dated the 24th August 1954 passed in Civil Miscellaneous Writ No. 45 of 1954, after their application for leave to appeal to this Court had been dismissed by that Court's order dated the 5th August 1955. This petition was not filed within the time limited by the rules of this Court and on their own showing there was a delay of 44 days in filing the petition for special leave. The only ground urged in support of the application for condonation of delay (being Civil Miscellaneous Petition No. 1402 of 1955) is that they had to collect money from amongst a large number of petitioners who were interested in the case. In our opinion, that is not a sufficient ground for condoning the delay. In the result, both the petition under [article 32](#) of the Constitution and the petition for special leave to appeal are dismissed. There will be no order as to costs."

Even the Punjab and Haryana High Court in the matter of **Arjan Singh & Ors. Vs. State of Punjab (2000) 126(3) PLR 574** held that financial constraint cannot be a ground of condonation of delay. Paragraph 8 thereof reads thus:

"8. It is also a settled principle of law that a

substantive right accrues to the other party when the appeal against the judgment becomes barred by time. This right must not be taken away in a casual manner and there should be really a sufficient and good reason for condonation of delay. The learned counsel for the claimants relies upon N. Balakrishnan v. M. Krishnamurthy MANU/ SC/ 0573/ 1998MANU/SC/0573/1998 to argue that the expression 'sufficient cause' must be liberally construed and delay should be condoned. No doubt the Hon'ble Apex Court has so observed in this judgment but the Court has equally stated that some sufficient cause must be shown and the party may not explain each hour's or day's delay but it must give a plausible explanation for the period of delay involved for condonation. In the present case there is no explanation much less a reasonable or a good explanation for condoning the delay.

The yard stick of justice demands an equibalance between the applicant and non-applicant, may be with a little tilt of liberal interpretation in favour of the State. At this stage it will be appropriate to refer to the judgment of this court in case of State of Haryana v. Jit Ram being RFA No. 2129 of 1997 decided on 19.11. 1999 following the principles enunciated by the Hon'ble Supreme Court of India in case of P.K. Ramachandran (supra) as under:

"A right of finality of the judgment of the learned Additional District Judge has vested in the non-applicant (respondent herein). The right, therefore, cannot be taken away in a routine manner. There has to be definite and complete averments so as to constitute a sufficient cause for condoning the delay in filing the appeal. In the present case, nothing has been stated that by whom the file was

dealt with, for how long and for what purposes. Mere one line allegation without describing the duties, periods and the purpose of the concerned official in dealing with the file would not constitute a sufficient cause for condonation of such serious delay. The mere procedure of office and delay resulting therefrom per-se cannot constitute a sufficient cause within the meaning of Section 5 of the Limitation Act. May be the State is not required to explain each day's delay like a private litigant but it must by and large explain the cause of delay with particulars and some definite averments.

A definite right has accrued to the non-applicant and that right certainly cannot be taken away so lightly because it has the affect of ignoring the statutory provisions of the Limitation Act. In this regard, a reference can be made to the judgment of the Hon'ble Supreme Court of India in the case titled as P.K. Ramachandran v. State of Kerala and Anr. MANU/SC/1296/1997MANU/SC/1296/1997, wherein it has been held that:

"Law of Limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious the order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time."

Reference can also be made to the judgment of

the Supreme Court in the case of P.K. Ramachandran v. State of Kerala and Anr. MANU /SC /1296/ 1997 MANU/ SC/1296/1997 where the Court observed as under :-

"The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent state for condonation of the inordinate delay of 565 days.

6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained."

6 Hence, the Civil Application stands dismissed.

7 In view thereof, the registration of the First Appeal stands rejected.

(K.K.TATED, J.)