

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

First Appeal No.1576/2019
Vimlabai Rathod & Ors. Vs. Union of India

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Raju Kadu h/f Mr. S.D. Chande, Advocate for appellants
Mr. N.P. Lambat, Advocate for the respondent.

CORAM : MANISH PITALE, J.

DATED : OCTOBER 03, 2019

By this appeal, the appellants (original claimants), have challenged Judgment and order dated 01/08/2017, passed by the Railway Claims Tribunal, Nagpur, whereby the application for condonation of delay filed on behalf of appellants in approaching the Tribunal has been rejected. Consequently, the claim application filed by the appellants was not taken up for consideration on merits at all.

2. A perusal of the impugned Judgment and order passed by the Tribunal shows that there was delay of 2065 days on the part of the appellants in preferring claim application before the Tribunal. The incident in the present case occurred on 09/3/2011, while the claim application was filed after about 5 years and 42 days i.e. total 2065 days before the Tribunal. By the impugned Judgment and order, the

Tribunal held that the statute of limitation could not be given a go by and that such huge delay could not be condoned as Limitation Act was expression of public policy that those who sleep over their rights cannot be permitted to agitate them belatedly. On this basis, the application for condonation of delay in filing appeal on behalf of the appellants was rejected.

3. Mr. Raju Kadu h/f Mr. S.D. Chande on behalf of the appellants submitted that detailed reasons were stated in the application for condonation of delay, including the fact that the Advocate whom the papers handed over by the appellants for filing claim before the Tribunal, failed to file the claim application within time and he later died in an unfortunate incident. It was also pointed out in the application that the appellant No.1 is an illiterate woman and that it took some time for her and other appellants to collect papers from the office of deceased Advocate and then to approach the Tribunal. It is contended on behalf of the learned counsel for the appellants that this reason was not even discussed in the impugned judgment and order of the Tribunal while rejecting the application for condonation of delay. The learned counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **Manoharan Vs. Sivarajan and others** 2014(5) Mh.L.J. 3 and Judgment of the Madras High Court in the case of **Tmt. Adhilakshmi w/o late Nagaraj Vs. Union of India**, owning Southern

Railway, Rep. by its General Manager, Southern Railway, Chennai – 600003, 2016(3) ACC 502.

4. On the other hand, the learned counsel for the respondent submitted that the delay in the present case was more than 5 years and in that context the impugned judgment and order of the Tribunal was justified.

5. Heard learned counsel for rival parties. When considering the question of whether the applicants had demonstrated sufficient cause for condonation of delay, the least that was expected was that the Court or Tribunal concerned, considered, discussed and deliberated upon specific reasons put forth in the application seeking condonation of delay. In the present case, a bare perusal of the Judgment and order of the Tribunal shows that other than discussing Law of Limitation and making general observations about public policy that has resulted in the development of Law of Limitation, the Tribunal has not at all discussed the specific reasons given by the appellants in their application for condonation of delay. There is no discussion at all in the impugned Judgment and order as regards sufficiency of the cause stated in the application for condonation of delay on behalf of the appellants. The Tribunal has merely relied upon its own Judgments and orders passed in other such applications for condonation of delay and

thereupon dismissed the application filed by the appellants. It appears that the Tribunal has placed much emphasis on the fact that in the present case, admittedly, the delay was of 2056 days, which prima facie appears to be huge amount of delay in approaching the Tribunal.

6. But, the Tribunal was expected to take into consideration, the specific grounds stated in the application for condonation of delay on behalf of the appellants before proceeding to dismiss the application. A perusal of the application for condonation of delay filed on behalf of the appellants shows that the reasons seeking condonation of delay are stated in the application as follows :

“3] That, the applicants being dependent filed the compensation claim before the Hon’ble Tribunal. The applicant No.1 is the wife of the deceased and applicant No.2 is the son of the deceased and the applicant No.3 is the daughter of the deceased and all are living the life below poverty level. After death of Baliram Rathod who is the karta of the family the family suffered from great mental trauma and also financial crises. So with a hope to get compensation applicants filed the present claim.

4] It is pertinent to mention that the applicants are permanent resident of village Wai in the remote area of district Washim all are illiterate and simple layman an because of this they have not aware about any compensation claim in an untoward incident. But after the fateful death, the applicant nos. 1 and 2 came to Nagpur in the year January, 2012 to attend function at Nagpur and that

time applicants came to know that there is a provision of compensation for untoward incident and after that applicants arrange all the legal papers for filing the compensation claim but as they are very poor they have not in a position to pay the Advocate fee so after inquiry one of their relative told them the name of well known advocate Shri Khandalkar who was very social in his lifetime and always help poor and needy people so applicants went to the office of Advocate Shri Khandalkar and hand over all the legal papers and necessary documents to file. That, time Shri Khandalkar informed them that it takes 2 to 3 years for deciding the matter and at the state of evidence he will informed to the applicants for adducing the evidence. Therefore, the applicants were waiting for the call of Shri Khandalkar but unfortunately Shri Khandalkar was died in an fateful incident and as he was a very social person so many Marathi News Channel telecast his news of death an when the applicants watched the news, then came to know about the death of their Counsel and after few days they came to Nagpur to inquire about their compensation claim. But, they could not get any information about the matter so again he went to the Railway Claim Tribunal and inquired about their compensation claim but there also he could not get any information even by the advocates name and he also received information that Late Advocate Shri Khandalkar was not practice at Railway Claim Tribunal, Nagpur so the possibility that they will have hand over their matter to any junior. So after this the applicant no.2 again went to the office of Shri Khandalkar and after so many request to the clerk, hand over the documents to the applicant no.2 and applicant no.2 was disappointed that his claim application was not filed till date.

5] That, it is further submitted that, after inquiry the applicant no.2 has hand over

the brief to the present Counsel in the last week of October, 2016, that time the present counsel informed the applicant no.2 about the necessary documents and photographs of all the applicants and after that the present Counsel has prepared the matter and file the same before this Hon'ble Tribunal, therefore the delay of near about 2065 days in filing the claim petition before this Hon'ble Tribunal."

7. Such reasons put-forth by the appellants were nowhere discussed in the order of the Tribunal. The fact that the papers were handed over to the Advocate named in the application and the fact of his unfortunate demise was not disputed and in such a situation it was necessary for the Tribunal to have adverted to the same before rendering a finding regarding sufficiency or otherwise about the reasons given by the appellants for seeking condonation of delay.

8. Apart from the said glaring error committed by the Tribunal, the learned counsel for the appellants is justified in relying upon the Judgment of the Hon'ble Supreme Court in the case of **Manoharan Vs. Sivarajan and others** (supra), wherein the Hon'ble Supreme Court has emphasized on the approach to be adopted while considering the application for condonation of delay and analyzing as to whether the cause stated by the applicants seeking condonation of delay could be said to be sufficient or not. The emphasis is on an endeavour to decide the lis between the parties on

merits rather than on hyper-technicalities. The learned counsel for the appellants has correctly relied upon the Judgment of the Madras High Court in the case of **Tmt. Adhilakshmi w/o late Nagaraj Vs. Union of India, owning Southern Railway** (supra), wherein the Madras High Court was concerned with condonation of delay in similar circumstances concerning the claim application under the same legislation and before the Tribunal under the said legislation. Emphasis was placed on the Railways Act, 1989, under which such claims are raised, as being a beneficial legislation and, therefore, the necessity to ensure that the claims are decided on merits.

9. In view of the above, this Court is of the opinion that the Tribunal committed a grave error in dismissing the application for condonation of delay filed by the appellants. This Court finds that the reasons given in the application for condonation of delay were sufficient and that it could not be said that the reasons were not bonafide or that delay was deliberate on the part of the appellants. It is obvious that the appellants had nothing to gain by approaching the Tribunal after such huge delay.

10. In the light of above, the appeal is allowed and the impugned Judgment and order passed by the Tribunal is quashed and set aside and the application for condonation of delay filed by the appellants before

the Tribunal stands allowed.

11. The Tribunal shall not take up the claim application filed on behalf of the appellants for decision on merits. It would be open for the Tribunal to decide the application on merits, including the question as to whether the appellants would be entitled to interest for the days of delay in approaching the Tribunal.

12. Appeal is disposed of.

JUDGE