

C.M.P.Nos.20186 to 20189 of 2017
in
C.M.A.SR.Nos.68639, 68642, 68645 & 68648 of 2017

V.BHAVANI SUBBAROYAN.J,

These Civil Miscellaneous Petitions have been filed seeking for condoning the delay of 1036 days in filing the above appeals.

2. The petitioner, namely, the Employees State Insurance Corporation, has filed affidavits in support of these petitions stating that the petition in ESIOP.No.2 of 2014 filed by the respondent was allowed on 07.08.2014 by the Labour Court (ESI Court), Cuddalore and the copy application was filed on 11.08.2014. The certified copy of the order was made ready and taken delivery on 01.09.2014. Thereafter, the learned counsel for the appellant had forwarded the said order copy to the Regional Office, ESI Corporation at No.143, Sterling Road, Chennai – 34 and the entire records were put up to the Deputy Director to decide about the filing of the appeal before this Court. The Deputy Director had opined to file an appeal and therefore, all the papers were sent to the Regional Director for his approval. Subsequently, the Regional Director also agreed with the opinion of the Deputy Director and therefore, the file was sent to the counsel, who required some more records to prepare the appeal, and in the above process, the delay had occurred to the tune of 1036 days in filing the above appeals. Thus, the delay occurred only due to the administrative exigencies beyond the control of the ESI Corporation and the same is not neither willful nor wanton, and prayed for condoning the said delay.

3. Denying the averments, the respondent, namely, M/s.Neyveli Lignite Corporation Limited, has filed a counter affidavit stating that these petitions are factually and legally not maintainable. The petitioners have not acted with expected care and caution, which resulted an unexplained inordinate delay of 1036 days (about 3 years) in filing the above CMAs. The petitioners have not filed any documents in support of the averments made in the petitions and the delay of about three years in filing the above appeals are not explained in a manner known to law. The petitioners have not shown the sufficient causes for excusing the inordinate delays, and the proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested with this Court, which is completely absent in the above petitions. As such, the petitions for condoning the delay have to be dismissed.

4. It has been further stated in the counter affidavit that on the demand made by the petitioners, the respondent has remitted the entire contributions along with interests within a reasonable time. But the petitioners have demanded exemplary damages without any basis alleging delays in payment of contributions by the respondent. The alleged delays on the part of the respondent were explained in detail and the same was accepted by the Employees' Insurance Court, Cuddalore in the reasoned Judgment impugned in the above appeals. The Court has categorically held that there was no bad intention to delay in remitting the contributions on the part of the respondent. The alleged delays by the petitioners in the remittance of the contributions were not at all attributable to the respondent. There was no deliberate

intentional delays by the respondent in the payment of contributions under the provisions of the Act and it was not the case of the petitioners as well that the respondent had intentionally delayed in remitting the contributions. It is also on record that the damages claimed by the petitioners for the alleged delays in payment of contributions by the respondent were in violation of the principles of natural justice. As such, the damages claimed by the petitioners are unwarranted and illegal. For these reasons as well, the above Civil Miscellaneous Appeals deserve to be dismissed, and sought for dismissal of the same.

5. It is pertinent to point the Judgment of the Hon'ble Supreme Court of India reported in the case of *[Bhivchandra Shankar More Vs. Balu Gangaram More & Ors.]*, wherein, it has been held in Paragraph 16 as follows :-

"..... As pointed out earlier, an appeal under Section 96 CPC is a statutory right. Generally, delays in preferring appeals are required to be condoned, in the interest of justice, where there is no gross negligence or deliberate inaction or lack of bonafide is imputable to the party seeking condonation of delay."

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6. In view of the above Judgment, these petitions can be ordered condoning of the delay of 1036 days as this Court does not find any gross negligence on the part of the petitioners in preferring the above appeals. Hence, this Court is inclined to order these petitions with costs of Rs.10,000/- i.e. 2,500 for each of the petitions.

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7. Accordingly, the delay of 1036 days are condoned and these Civil Miscellaneous Petitions are ordered with costs totaling of Rs.10,000/- each Rs.2,500/- to be paid to the Madras Society for the Protection of Children No.891/288, T.H.Road, Old Washermenpet, Chennai – 600021, within a period of two weeks from the date of receipt of a copy of this order, failing which, the order of condone delay shall stand cancelled without further reference to this Court.

13.12.2019

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Note: Registry is directed to number the appeals, if they are otherwise in order and list the C.M.As for admission after the receipt of the above payment.

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