

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(PD).No.3765 of 2018

and

C.M.P.No.2278 of 2018

1.Raghavan

2.D.Selvi

3.R.Sridhar

4.R.Vijayalakshmi

.. Petitioners

Vs

Union of India,
Owning Southern Railway,
Rep. By its General Manager,
Southern Railway Building,
Chennai-600 003.

..Respondent

Civil Revision Petition filed under Article 227 of the Indian Constitution to set aside the order of the learned Vice Chairman of the Railway Tribunal in I.A.No.02 of 2017 in O.A.Dy No.05 of 2017 dated 16.03.2017.

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For Petitioners : Mr.C.Kathiresan

For Respondent : Ms.T.P.Savitha

ORDER

The above Civil Revision Petition is filed challenging the order passed by the Railway Claims Tribunal in I.A.No.02 of 2017 in

<http://www.judis.nic.in> O.A.Dy No.05 of 2017 dated 16.03.2017, in and by which, the

Railway Tribunal has dismissed the application filed by the claimants for condoning the delay of 785 days in approaching the Tribunal seeking a compensation on account of death.

2. The brief facts which preceed the filing of the Civil Revision Petition are as follows:

2.1. It appears that on 03.12.2013, the claimant along with the deceased Dhanasekari were crossing the track at Sullurpet Railway Station, where they had alighted on their journey from Chennai. While, crossing the track, deceased was hit by the train viz., Tamil Nadu Express and she had succumbed to her injuries.

2.2. It appears that thereafter the petitioner had taken considerable time for obtaining the police records, death reports, final reports and other documents necessary for filing the claim petition. Though nothing has mentioned in the affidavit, which has been filed in support of the petition, as to why the delay had occurred. The learned counsel for petitioner would represent that the petitioners are from Tamil Nadu and they were not conversant with the local language and this has caused the delay. The other reason for the delay was that the family was totally upset by the untimely death and therefore, they were not able to contact the learned counsel and only in the month of January-2017 they had contacted him and immediately the application has been filed.

2.3. To this petition, the respondent/Railways had filed a counter wherein they had only stated that the reasons given was not acceptable to them and that every days delay has not been explained. Apart from this, there is no other major defence taken to the application.

3. The Railway Claims Tribunal by its order dated 16.03.2017 proceeded to dismiss the said application on the ground that the application did not show sufficient cause and lack of merits and therefore the same had to be dismissed. They relied extensively on the Judgment of the Hon'ble Supreme Court reported in **2013(14) Supreme Court Cases 81[BASAWARAJ AND ANOTHER Vs. SPECIAL LAND ACQUISITION OFFICER]** to dismiss the application. They have also relied on an other Judgment of the Hon'ble Supreme Court reported in **2013 (5) CTC 547 [Esha Bhattacharjee V. Manging Committee of Raghunathpur, Nafar Academy and others]**. Challenging the said order the revision petitioner are before this court.

4. Heard Mr. C. Kathiresan, learned counsel for the revision petitioner, who would argue that the petitioner has shown sufficient cause for the delay and the court ought to have taken a more humane approach while dealing with the application for condoning the delay particularly when reasons are given in the affidavit. The same has once again reiterated by the learned counsel appearing for

the petitioner. The counsel for the respondent would contend that sufficient cause has not been shown and therefore the tribunal was right in dismissing the petition. She would also contend that only an appeal under Section 23 of the Railways Claims Tribunal Acts would apply.

5. The judgments which have been relied on the Tribunal below, for dismissing the application, have both stated that sufficient cause has to be considered and only if the same lacks bonofides, same should be rejected. The Hon'ble Supreme Court held that the lackadaisical attitude which is adopted by the litigant cannot be condoned. However, in the case on hand it is not the case of the respondent that the petitioners are guilty of protracting the proceedings and further sufficient reason have been given in the affidavit filed in support of the condone delay petition. It is seen that the lady of the house had died in an accident which by itself is traumatic. She has left behind her children and husband, who are forced to cope with a situation which has been thrust upon them on account of the accident. The family must have undergone a harrowing time and further the accident that taken place at Sullurpet Railway station which is in Andra Pradesh and the petitioner belonged to Tamil Nadu. Therefore communicating with the authorities in an other state in alien language is by itself a reasonable cause for the delay. Taking into consideration all the above it can be seen that they

have attributed for the delay. Taking into consideration, the circumstances which has resulted in the delay, the tribunal has adopted as strait jacketed approach in dismissing the application. The Tribunal has also not considered the ratio laid down by the afore said judgments from a correct perspective. As regards the arguments on maintainability Section 23 (1) of the Railway Claims Tribunal Act reads as follows:

"23. Appeals:—(1) *Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located."*

Therefore it is clear that from an interlocutory an appeal under Section 23 of the will not lie.

6. I find that the order of the tribunal below suffers from perversity and therefore liable to be set aside. In the result the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.02.2019

tta/jrs

Index: Yes/No

Internet: Yes /No

Speaking /Non-speaking.

P.T.ASHA.J.,

tta/jrs

To

1. The Vice Chairman of the Railway Tribunal

2.The General Manager,
Union of India,
Owning Southern Railway,
Southern Railway Building,
Chennai-600 003.



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