

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.M. No. 3242-CII of 2015 in/and
FAO No. 1186 of 2015
Date of Decision: 08.03.2019

M/s New Deep Bus Service (Regd.)Gidderbaha

.....Applicant-appellant

Versus

Usha Rani and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Surinder Garg, Advocate
for the applicant-appellant.

Mr. Aseem Aggarwal, Advocate
for Insurance Company.

AVNEESH JHINGAN, J.(oral)

This is an appeal against the award dated 2.7.2013 passed by Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as 'the Tribunal')

The appeal has been filed by the owner of bus bearing registration No. PB-30-F-9678 (for short 'the offending vehicle'), alongwith application seeking condonation of delay of 400 days in filing thereof.

The facts in brief are that a motor vehicular accident took place on 22.8.2011. The accident proved fatal for Jatinder Singh. The accident was caused due to rash and negligent driving of the offending vehicle. The Tribunal awarded a sum of ₹ 5,48,000/- alongwith interest at the rate of 9% per annum to the legal heirs of Jatinder Singh. The applicant-appellant failed to produce route permit. The insurer of the offending vehicle was given recovery rights.

In the application filed, it has been stated that the delay in filing the appeal occurred as the counsel before the Tribunal gave an impression to the applicant-appellant that the Insurance company had to pay the amount awarded.

It was only when the recovery proceedings were initiated by the District Collector, Muktsar, in September 2014, the applicant-appellant took the certified copy of the award and filed the appeal.

The explanation put forth is not satisfactory. The applicant-appellant is a Transport Company as is evident from its name and the said fact has not been disputed by counsel for the applicant. It cannot be accepted that they were not aware of the result of the claim petition being a business entity engaged in transport business. Moreover, in the averments neither the name of the counsel before the Tribunal has been mentioned nor the application is supported by the affidavit of said counsel. The explanation given is as vague as it could be.

No doubt that a liberal approach is to be adopted for condonation of delay, in cases where delay is of short period but a stricter approach is to be made where delay is long.

The Supreme Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459***, held as under :-

“8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause”

employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.”

The delay is not be condoned mechanically even in absence of any satisfactory explanation. While condoning the delay sufficient explanation should be there.

In **Basawaraj and another v. Special Land Acquisition Officer (2013) 14 SCC 81** held that:

9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a

satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

Further the Supreme Court in *Pundlik Jalam Patil (D) by LRs. Versus Exe. Eng. Jalgaon Medium Project and another, (2008) 17 SCC 448*, has held as under:

"..... It was its duty to prefer appeals before the Court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and do not slumber over their rights."

The Supreme Court in case of *Tribhuvanshankar Vs. Amrutlal, 2014 (1) RCR (Civil) 206*, has laid down that the fundamental policy behind the limitation is that if a person does not pursue his remedy within the stipulated time-frame, the right to sue gets extinguished.

In the present case, a maxim of roman law subsequently embraced by equity : *Vigilantibus Et Non Dormientibus Jura Subveniunt*, which says the law comes to the assistance of those who are vigilant with their rights, and not those who sleep on their rights. It is evident that applicant was not vigilant in pursuing its remedies.

No ground is made for condonation of delay. The application is dismissed and as a result thereof, the appeal is also dismissed being time barred.

08.03.2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	Yes