

In the High Court of Punjab and Haryana at Chandigarh

**CM No. 23282-CII of 2016 in/and
FAO- 6695 of 2016
Date of Decision: 12.3.2019**

Anil Kumar

---Applicant-Appellant

Krishan Kumar and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Jainainder Saini, Advocate
for the applicant-appellant**

Rekha Mittal, J.

CM No. 23282-CII of 2016

Prayer in this application is for condoning delay of 748 days in filing FAO No. 6695 of 2016 against an award whereby claim application for grant of compensation on account of injuries sustained by the appellant in a motor vehicular accident, was dismissed.

Counsel for the applicant-appellant would argue that delay in filing the appeal is neither intentional nor mala fide but due to the reasons beyond his control, averred in para 2 of the application. It is further argued that the court needs to adopt a liberal and non-pedantic approach while deciding question of condonation of delay so that meritorious claim is not rejected on technical consideration.

I have heard counsel for the applicant and perused the averments raised in para 2 of the application, supported by an affidavit of applicant-Anil Kumar.

There cannot be any dispute about the settled position in law that court needs to adopt liberal approach while dealing with question of condonation of delay but at the same time the applicant has to establish that there is sufficient cause for his failure to prefer the appeal within the stipulated period of limitation. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Ramlal and others vs. Rewa Coalfields Limited AIR 1962 SC 361** .

Reverting to the case at hand, the applicant has raised allegations in para 2 of the application to say that there is sufficient cause for condoning delay of approximately two years. A relevant extract from para 2 of the application, reads thus:-

“That as a matter of fact, the impugned award was passed by the ld. MACT, Hisar on 8.5.2014 and the appellant got applied for certified copy on 17.5.2014 which was prepared on 19.5.2014 and delivered on 21.5.2014. However, the appellant misplaced the certified copy and despite his best efforts, could not trace out the same. It was only in the first week of August, 2016, the certified copy was found lying in a trunk and the appellant engaged the present counsel on 19.8.2016 and appeal is being filed without any further delay.”

Nothing has been mentioned in the application that even if the applicant has actually misplaced the certified copy, as sought to be projected, what restrained him from applying for another certified copy of the judgment and file the appeal at the earliest possible time. It is difficult to accept to reason that a person would wait for more than two years for searching certified copy at the cost of incurring risk of non-acceptance of

appeal on the ground that the same has been filed after prescribed period of limitation. In this view of the matter, the applicant has miserably failed to make out a case that there is sufficient cause for condoning delay of 748 days in filing the appeal. No sooner the applicant fails to satisfy the court that there is sufficient cause for non-preferring the appeal within the stipulated period or condoning delay of about two years, nothing survives for consideration of this court if the delay is otherwise required to be condoned in discretionary jurisdiction of this Court. That being so, the application filed by the applicant is devoid of merit and accordingly rejected.

As the application for condonation of delay is dismissed, the appeal is dismissed being barred by limitation.

(Rekha Mittal)
Judge

12.3.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No