

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3861 of 2017 (O&M)

Date of decision: 22.1.2019

Amar Nath through LRs and others

.. Appellants

v.

Ujawal Yadav and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vishwajit Bedi, Advocate for the appellants.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 4.4.2014 passed by the Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') has been assailed by the legal heirs of Parkash Kumar seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the 1988 Act').

The appeal is accompanied by an application filed under Section 5 of the Limitation Act, 1963 (for short, 'the 1963 Act') for condonation of delay of 1013 days in filing the appeal. The reason mentioned in the application is extracted below:

“2. That the delay in filing the present appeal is on account of the reason that the appellants No. 2 & 3 i.e. mother & widow of deceased Parkash Kumar are poor and illiterate ladies and they were not aware about the limitation period for filing an appeal

before the Hon'ble Court and when the appellants had contacted the present counsel, they came to know from the present counsel that the limitation period for filing an appeal for enhancement is 90 days from the date of receiving the certified copy of the award passed by the Ld. Tribunal.”

Learned counsel for the applicants-appellants argues that the appeal is being filed under a beneficial legislation, hence the delay should be condoned.

There is no dispute that the 1988 Act is a welfare legislation but the fact remains that the 1963 Act still holds the field. Section 5 of the 1963 Act provides for condoning the delay, if 'sufficient cause' is shown.

From a perusal of the application, it is evident that the reason mentioned therein is neither bonafide nor sufficient. The award was passed in April, 2014, an execution application for getting the amount awarded was filed on 14.8.2014. The explanation put forth that the applicants-appellants were not aware that there is limitation of 90 days for filing the appeal is belied from the fact that within reasonable time of passing of the award, the execution application was filed. For filing the execution application, the applicants-appellants would have contacted the counsel and then to say that till April, 2017 they were not aware about the limitation to file appeal is not acceptable.

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.'"

In case of ***Amalendu Kumar Bera and others Versus The State of West Bengal 2013 (2) RCR (Civil) 534***, the Supreme Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned. In case of serious negligence, the delay should not be condoned.

The Supreme Court in ***State of Nagaland v. Lipok Ao, 2012 (3) RCR (Civil) 73: 2012 (2) Recent Apex Judgments (RAJ)482: 2012 (5) SCC 157***, in paragraph 24 has held as under:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

The Supreme Court in case ***Basawaraj and another v. Special Land Acquisition Officer 2017(3) PLR 299***, while dealing with the scope of "sufficient cause" has laid down as under:

".....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."

In ***P.K. Ramachandran v. State of Kerala & Anr., 1997(4) R.C.R.(Civil) 242 : AIR 1998 SC 2276***, the Supreme Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

Moreover, in the present case the delay is of almost three years, the same cannot be said to be a short duration. For short delay, liberal view is to be taken and strict approach is adopted for larger delay.

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.”

In the present case, there is no explanation or much less satisfactory explanation for condonation of delay. It would be appropriate to mention that the 'sufficient cause' explained is not bonafide as execution was being pursued but appeal was not filed.

In view of the facts noted above and law discussed, no ground is made out for condoning the delay.

The application is dismissed and as a result thereof, the appeal is also dismissed being time barred.

(AVNEESH JHINGAN)
JUDGE

22.1.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No