

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4348 of 2018 (O&M)
Date of decision: 31.1.2019

Shamsher and another

.. Appellants

v.

Mubind and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Chetan Kapoor, Advocate for the appellants.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 28.2.2014 passed by the Motor Accident Claims Tribunal, Mewat at Nuh (for short, 'the Tribunal') has been assailed by the parents of Ms. Nazrana 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 1,417 days in filing the appeal. The reason mentioned in the application is quoted below:

“2. That it is relevant to mention here that the appellants are not known with the technicalities of law and they are fully dependent upon the advise of their counsel. The appellants met with their counsel in the 3rd of April, 2018, only then the Ld.

Counsel has suggested them to file an appeal before this Hon'ble Court. He has also told them that now delay has occurred in filing the appeal. Thereafter, they arranged the funds and approached their Counsel at Mewat for the further action. He has handed over the copy of the impugned order to the appellants and suggested them to file an appeal before Hon'ble High Court. It was only possible for them to reach and meet their present counsel on 25.4.2018. Thus the appeal is now being filed and the delay happened due to the above mentioned reasons.”

In the above quoted reason, the cause for delay has been mentioned that the applicants met their counsel on 3.4.2018 and they were not aware of the technicalities of law. After meeting the counsel, they arranged the funds and the present appeal along with the application for condonation of delay was filed.

The explanation put forth is neither satisfactory nor bonafide. During the course of hearing, on pointed query being made to learned counsel for the applicants-appellants as to when the amount of compensation awarded by the Tribunal was disbursed to the applicants-appellants and whether any execution application was filed. Learned counsel for the applicants-appellants states that an execution application was filed and in those proceedings the amount was disbursed to the applicants-appellants in June, 2015 vide Pay Order for Court Refund Only dated 27.5.2015. This itself establishes that the applicants-appellants were in touch with their counsel and it has wrongly been stated that they met their counsel in April, 2018 and at that time he suggested that an appeal should

be filed.

It is well-settled that a liberal view is to be adopted for condonation of delay but in cases there is an inordinate delay, strict view has to be taken.

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 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 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

31.1.2019
mk

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