

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.25049 of 2019

in

C.M.A.SR.No.144359 of 2019

1.M.Poongodi

2.S.Mani

.. Petitioners

Vs.

1.K.Shankar

2.Shri Ram Gen.Ins.Co., Ltd.,
10003-E,8,RIICO Industrial Area,
Rajasthan – 302 022.

(The 1 Respondent Exparte in lower Court,
Hence, Notice may be dispense with)

.. Respondents

PRAYER: C.M.P.No.25049 of 2019 is filed under Section 173(1) of Motor Vehicles Act, 1988 to condone the delay of 2429 days in filing C.M.A.SR.No.144359 of 2019.

C.M.A.SR.No.144359 of 2019 is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 21.12.2012 made in M.C.O.P.No.1538 of 2010 on the file of the Motor Accident Claims Tribunal, (2nd Additional District Judge), Salem.

For Petitioners : Mr.R.Thirunavukkarasu
For Respondents : R1 - Exparte

ORDER

The civil miscellaneous petition is filed to condone the delay of 2429 days in filing the civil miscellaneous appeal against the order passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.1538 of 2010 dated 21.12.2012.

2. The condone delay petition is filed under Section 173(1) of the Motor Vehicles Act, 1988. The appeal is to be filed within the period of limitation prescribed under Section 173(1) of the said Act. Accordingly, 90 days time limit is contemplated. The Proviso Clause to Section 173(1) stipulates that the High Court may entertain the appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Thus, there must be sufficient cause for delay and the reasons stated for such an enormous delay in filing the appeal is also to be explained and must be an acceptable one.

3. Law of Limitation as contemplated under Section 173(1) of the Motor Vehicles Act is the law. The condonation of delay is an exception under the proviso clause. Thus, the condonation of delay can never be a mechanical affair and the High Court cannot condone the delay in a routine manner. When the law provides limitation for preferring an appeal and the proviso clause as contemplates the power of discretion to the Court to condone the delay, then such discretionary powers are to be exercised judiciously and by recording reasons. It is not as if, the High Courts can condone the delay in a routine manner, so as to dilute the law of limitation as contemplated under the said Act. Thus, in all cases, where there is an enormous delay in filing an appeal, the Courts are bound to ascertain the reasons and its genuinity and the acceptability of such reasons. The reasons must be candid and the Courts are bound to record such reasons, while condoning long delay.

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4. As far as the lis on hand is concerned, there is a delay of 2429 days. The reasons stated in the affidavit for condoning the delay of 2429 days is that the lower Court counsel sent the papers and the Appellate Court counsel misplaced the papers and not filed an

appeal. Such reasons cannot be accepted in a routine manner. The petitioner has not substantiated even the said reason and the blank statements are made that the papers were misplaced and therefore, the appeal was not filed and the delay is 2429 days. Such a blank reasons cannot be trusted upon in the absence of any evidence or reasons, which must be genuine. Except that reason, no other reason has been stated in the affidavit filed in support of the miscellaneous petition. Enormous delay cannot be condoned by the Courts in a routine manner.

5. In all such delay, the reasons must be candid, enabling this Court to exercise the power of discretion under the Proviso Clause to Section 173(1) of the Motor Vehicles Act. In the absence of any such convincing reasons, the Courts would not condone the huge delay in a routine manner, which would defeat the very purpose of law of limitation as contemplated under the statute. Uncondonable delay cannot be condoned.

exercised properly and in order to mitigate certain circumstances arising on account of the certain events or incidents, which must be an acceptable one. Contrarily, certain reasons, which are flimsy and routine, cannot be a ground to condone the huge delay.

7. In the present case, the petitioner has not established any acceptable reason for the purpose of condoning the delay of 2429 days and therefore, this Court is not inclined to condone the delay and consequently, C.M.P.No.25049 of 2019 stands dismissed and C.M.A.SR.No.144359 of 2019 is rejected at the SR Stage itself. No costs.

06.03.2020

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Index:Yes
Speaking order

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To

1.The 2nd Additional District Judge ,
(Motor Accidents Claims Tribunal),
Salem.

C.M.P.No.25049 of 2019 in
C.M.A.SR.No.144359 of 2019

S.M.SUBRAMANIAM, J.

Kak

2.The Sub Assistant Registrar,
A.E.Section,
High Court, Madras.



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