

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 9.1.2020

CM-843-CII-2020 in/&
FAO-665-2020 (O & M)

HDFC ERGO General Insurance Co. Limited ...Appellant

Versus

Ramesh Devi and others ...Respondents

CM-872-CII-2020 in/&
FAO-671-2020 (O & M)

HDFC ERGO General Insurance Co. Limited ...Appellant

Versus

Prag and another ...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashwani Talwar, Advocate
for the appellant(s)

RAJIV NARAIN RAINA, J. (ORAL):

1. This order shall dispose of FAO-665-2020 and FAO-671-2020, as both arise out of the common award dated 13.12.2018 passed by the Motor Accidents Claim Tribunal, Sonipat.

2. There is a delay of 257 days in filing these appeals. I have already expressed an opinion in a slew of cases involving delay while dismissing appeals where sufficient cause is not shown of the reasons which prevented the appellant from filing the appeal and in one of which i.e.

“New India Assurance Company Limited vs. Meena Rani Punj and others”, FAO No.7305 of 2017, decided on 15.11.2017, I dismissed the

appeal where there was a delay of only 11 days.

3. In one of the judgements of this Court in ***“Bajaj Allianz General Insurance Co.Limited vs. Amritpal Singh @Happy and others”***, FAO No.4827 of 2017, decided on 16.8.2017 and other connected case, I dismissed the appeal on limitation, the relevant part of which order is reproduced below:

“Delay of 16 or 28 days may not be tall or alarming, but at the same time this Court cannot ignore the principle involved in condoning delays in approaching Court even being as liberal as law permits, which is that there should be sufficient cause and reasonable explanation for the delay which is condonable and acceptable by any person of ordinary intelligence accepting the reasons which have caused the delay. But when I look at Para.2 of the application, I find that the only reason given to justify the delay in filing the appeal is the casual lament that the Head Office of the appellant – Company is in Pune and for taking a decision the delay is involved because the file has to go through many channels before approval can be granted for filing the appeal. How the file moved from Pune to Chandigarh and where were the inevitable bottlenecks in a private company and other material particulars to explain with dates and noting sheets/ correspondence inter office to evoke a favourable response from Court is completely missing in the applications. The appellant expects that such a defence will be readily swallowed and accepted by this Court, perhaps labouring under the wrong impression that delay of mere 16 and 28 days will inevitably and always be condoned even if the reasons for delay are weak.

Firstly, I am not dealing with a case involving a sluggish department of the Government who are no longer spared for delayed approach. One is dealing with an appellant, which is a private sector insurance company which is not bogged down like the State machinery and can act swiftly.

If it chooses to do business in Punjab, then it must gear itself-up to meet the challenges of litigation in this region which it

might face and keep its house in order. It is asserted that the appellant company has an office at Chandigarh, but they would need to re-enforce the company commanders so that delays are not caused in litigation. And if they do for reasons beyond their control as fully explained they might persuade the Court to condone the delay in filing the appeal.”

4. To be fair to Mr.Talwar, Advocate for the appellant he has cited the judgment of the Supreme Court in **“Central Bank of India vs. Jagbir Singh”** (2015) 14 SCC 788: AIR 2015 SC 2070, to submit that a liberal view should be taken of belated appeals the filing of which are caused due to procedural delays. That case arose under the Consumer Protection Act, 1986 arising out of the proceedings of the National Consumer Disputes Redressal Commission, New Delhi. There was a delay of 230 days by the appellant-bank in filing the appeal, but the Supreme Court found the delay sufficiently explained and for this Mr.Talwar refers to paras No.5 and 6 of the judgment which are reproduced below:

“5. Learned counsel for the appellant pointed out before us that the order of the State Consumer Disputes Redressal Commission was received by the appellant only on 26.11.2012, after the same was dispatched by the Commission on 19.11.2012. It is further submitted that the branch of the appellant bank is situated in a remote village and due to shortage of staff the matter could be taken up by the Regional Office only in December, 2012. It is contended that since it took time in obtaining the necessary permission for filing the revision, as such, the delay of 230 days, occurred in filing the revision petition, should have been condoned by the NCDRC. Admittedly, the revision petition was filed on 11.10.2013.

6. Having heard learned counsel for the parties and after going through the papers on record, we find that NCDRC has not considered properly the well explained delay in filing the revision petition before it. In our opinion, the time taken by the appellant bank in seeking permission to file the revision petition, as the matter

had to be processed at various levels, cannot be said to have been not sufficiently explained for the purpose of condonation of delay. Therefore, the impugned order dismissing the revision petition, in the present case, cannot be sustained.”

5. In matters of assessing delay for the purposes of Section 5 of the Limitation Act, 1963, the effort is largely fact centric, depending much on the contents of the application under Section 5 of the Limitation Act, 1963 supported by an affidavit. No hard and fast rule can be laid down to measure cause and each case must elicit an independent and content based judicial response. First priority is to look into the application for condonation of delay. As I read the application, I do not find any striking feature which might persuade this Court to condone the delay for the procedural delays. The relevant contents of the application are reproduced:

“That after receipt of the copy of the award, the defending counsel of the Insurance Company before the Tribunal sent the same along with his comments to Regional Office, Noida. The matter was examined in the Regional Office of the applicant-Company at Noida where all the cases pertaining to the Northern Region are handled and there were protracted correspondence between the defending counsel and the Regional Office. Since the awarded amount was quite less, the Company was in two minds whether to file the appeal or to satisfy the award. However, on minute examination of the case details, it transpired that in fact the claimants have played a fraud with the Insurance Company in order to grab compensation and the vehicle has been wrongly planted. In view of above, after protracted correspondence, the competent authority took a decision to prefer an appeal in the Hon'ble High Court. The demand draft of Rs. 25,000/- which is required to be deposited with the Registry of the Hon'ble High Court on 10.10.2019. The present counsel was engaged on 20.11.2019 through e-mail. The appeal was drafted, vetted and got signed and thereafter filed in the Hon'ble High Court on 25.11.2019. However, in the process there is a delay of 257 days

in filing the present appeal.”

(emphasis supplied)

6. This stock defence on the part of the appellant is legally unacceptable reason or a bonafide explanation for the belated approach preventing the appellants from filing the appeal within the prescribed period of limitation. No sufficient cause for filing the appeals belatedly has been shown in the present case which is commensurate with the criterion in Section 5 of the limitation Act for condoning the delay and explanations of this kind has been severely criticised by the Supreme Court in ***Office of the Chief Post Master General & ors. v. Living Media India Ltd. & Anr.***, 2012 (2) S.C.T. 269 where their Lordships have observed as under:-

“13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

Accordingly, the appeals are liable to be dismissed on the ground of delay.”

7. Often the gravity of a case and the injury that may result without a decision on merits may be so magnified that a Court would be cautious in declining interference by removing the obstruction of delay for

hearing the case on merits to do a substantial justice between the parties. But this principle very rarely apply in a matter where the claimants are awaiting their compensation awarded by the Tribunals and they are yet to see the fruit of the litigation. Somnolence of the appellant has given a tacit assurance to the claimants-respondents that the litigation has come to an end due to non filing of an appeal within the period of limitation prescribed and accordingly valuable rights have settled on them which can be dislodged only for the best reason. interference by this Court may result in justice to the respondents. I do not see any injustice on the Insurance Company which has been in two minds of whether or not to file an appeal as per their averments in the application to have the undue benefit of an admission of this appeal. The company had plenty of time to plead and prove fraud committed by the claimant/s before the Tribunal. The contents of the identical applications do not inspire any confidence of the Court and neither does the explanation for the delay amount to sufficient cause for the belated approach after a lapse of 257 days.

8. Consequently, the applications under Section 5 of the Limitation Act accompanying the appeals are dismissed and as a result, both the appeals are also dismissed.

January 9, 2020

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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No