

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 03-03-2021****Pronounced on 09-03-2021****M.A.(C) No.2150 of 2019**

Branch Manager, The New India Insurance Company Limited Divisional Office Jeevan Bima Marg Vyavsayik Parisar Pandri Raipur, District Raipur (CG): Through Authorized Signatory, Manager Suit Legal Hub, The New India Assurance Company Limited, Suit Legal Hub Office, 2nd Floor, Rama Trade Center, Above Axis Bank, Opp. Rajiv Plaza, Old Bus Stand Road, Bilaspur, District Bilaspur (CG).

---- Appellant**Versus**

1. Smt. Savitri Nishad, aged about 27 years, Wd/o Late Dilip Kumar Nishad.
2. Minor Sarla Kumari Nishad, aged about 7 years, D/o Late Dilip Kumar Nishad.
3. Minor Toop Singh Nishad, aged about 5 years, S/o Late Dilip Kumar Nishad.
4. Minor Purushottam Nishad, aged about 3 years, S/o Late Dilip Kumar Nishad.

All above three minors through their guardian mother Smt. Savitri Nishad (Respondent No.1).

5. Biselal, aged about 60 years, S/o Late Tijau Nishad.
6. Smt. Rajni Nishad, aged about 55 years, W/o Biselal Nishad.

All above resident of Village Muski, P.S. Tumgaon, Tahsil & District Mahasamund (CG).

7. Mukesh Agrawal, aged about 47 years, S/o Late Manohar Agrawal, R/o Village Jhalap, P.S. Pateva, Tahsil and District Mahasamund (CG).

(Owner of the Vehicle Truck Bearing No. C.G.04-JD/0657)

---- Respondents

For Appellant	: Mr. B. N. Nande, Adv.
For Respondents No.1 to 7	: None, though notice served.

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. By this order I.A. No. 1/2019 application for condonation of delay in filing the instant miscellaneous appeal is being disposed of.

2. Respondents No.1 to 6 had filed a claim case against the appellant and respondent No.7 for compensation of Rs.37,00,000/-.

3. Motor Accident Claim Tribunal, Mahasamund (C.G.) had passed the impugned award on 17.07.2019 directing the appellant and respondent No.7 that they shall pay jointly and severally a sum of Rs.9,77,200/- to respondents No.1 to 6.

4. Being aggrieved appellant has preferred instant miscellaneous appeal.

5. In brief the appellant's case regarding I.A. No.1/2019 is that after receiving the information that impugned award passed with opinion of the counsel representing him before the Tribunal, the case file was sent to the Regional Office for necessary action. Regional office considering the merit and demerit of the case file and obtaining legal opinion took a decision to prefer appeal and the case file was return to the Divisional Office, Bilaspur. The Divisional Office, Bilaspur allotted the case file to the counsel empaneled who in turn sought some necessary documents to be filed with appeal. Thereafter, the appeal was filed. The delay of 42 days is the outcome of the difficulties arisen on account of necessary follow up. The delay is bonafide and deserves to be condoned.

6. Counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Shakuntala Devi Jain v. Kuntal Kumari & Ors**, (AIR 1969 SC 575), wherein Hon'ble Supreme Court observed in para 7 as under :-

“7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in refiling the appeal with the certified copy should be condoned under Section 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in *Krishna v. Chathappan* [ILR 13 Madras 269, 271] “Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words “sufficient cause” receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable

to the appellant.”

7. Counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Collector, Land Acquisition Anantnag & Anr -v- Mst. Katiji and others**, [(1987) 2 SCC 107] wherein Hon'ble Supreme Court observed in para 3 as under :-

“3.The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is

capable of removing injustice and is expected to do so.”

8. Counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in the matter of **State of Haryana -v- Chandramani and others**, [1996 SCC (3) 132] wherein Hon'ble Supreme Court observed in para 11 as under :-

“11. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression “sufficient cause” should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.”

9. Counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Maniben Devraj Shah -v- Municipal Corporation of Brihan Mumbai**, [(2012) 5 SCC 157] wherein Hon'ble Supreme Court observed in para 23 as under :-

“23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various

stages of litigation apart from the cost.”

10. Counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in the matter of **State of Manipur and others -v- Koting Lamkang** [(2019) 10 SCC 408] wherein Hon'ble Supreme Court observed in para 10 as under :-

“10. In the present matter, the delay to the extent of 44 days, in moving before the wrong court was found to be satisfactorily explained in the impugned judgment [*State of Manipur v. Koting Lamkang*, 2017 SCC OnLine Mani 123] . As regards the failure of the State to adequately explain the remaining period of delay, our opinion is that the interest of justice would be better served, if the appellants' challenge to the decree of the trial court is allowed to be examined on merit, by the first appellate court. If the merit of the defendant's RFA is not permitted to be examined by the appellate court, the State will have no opportunity to address their grievances before a higher court. We may also observe that if consideration of the RFA is not permitted on strategically sensitive case involving security, in the ultimate analysis, the public interest is likely to suffer. The first appeal should therefore be considered on merit instead of the State being non-suited, on the ground of delay.”

11. Counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Pappu and others -v- Vinod Kumar Lamba and another** [2018 (3) SCC 208] and in the matter of **Lachoo Ram and others -v- Himachal Road Transport Corporation** [2014 (13) SCC 254]. These judgments are not related to the condonation of delay hence appellant does not get any help from them.

12. Hon'ble Supreme Court in the matter of **N. Balakrishnan v. M. Krishnamurthy**, [(1998) 7 SCC 123] observed in para 9 to 13 as under :-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in

certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no

presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR 1006] and *State of W.B. v. Administrator, Howrah Municipality* [(1972) 1 SCC 366 : AIR 1972 SC 749] .

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

13. In the decision of Hon'ble Supreme Court in the matter of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors**, [(2013) 12 SCC 649] it has been held that :-

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
- (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

14. In the case in hand impugned award was passed on 17-7-2019. The appeal could be filed within 90 days from 17-7-2019 as per the provisions of Section 173 of the Motor Vehicles Act, 1988. Appellant has preferred this appeal on 26-11-2019. The appellant has preferred this miscellaneous appeal with a delay of 42 days.

15. In the case in hand, the prescribed period of limitation 90 days was expired on 15-10-2019. Appellant failed to show that as to how many days the case file was pending before Regional Office for obtaining the legal opinion and taking the decision to prefer the appeal, as to how many days the case file was pending before the Divisional Officer, Bilaspur to allot the case file to concern counsel, and as to how many days the case file was pending before the concerned counsel for preparing the appeal, especially these authorities had specific knowledge that in the case in hand the period for preferring appeal is only 90 days. After expiration of 90 days the concerned authorities had under obligation to expedite the process on day by day basis and make attempt by tooth and nail, to file the appeal within

very short period. Moreover, along with the appeal only one document certified copy of the order passed under Section 170 of the Motor Vehicles Act has filed, as per the certified copy of the same application for certified copy was filed on 26-8-2019 and it was ready and given on 28-8-2019, it means the certified copy of the same was received by the appellant before the expiry of 90 days, hence the explanation of the appellant that counsel sought some more document hence delay caused does not appear natural and normal. Moreover, this case is not strategically sensitive involving security. Hence, aforesaid reasons raised by appellant to explain the delay of 42 days are of routine and haphazard manner. Negligence, inaction, want of bonafide is imputable to him. The aforesaid explanations regarding 42 days' delay do smoke of malafide.

16. Looking to the above mentioned facts and circumstances of the case, this Court finds that appellant does not get any help from aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **(i) Collector, Land Acquisition** (supra), **(ii) State of Haryana** (supra), **(iii) Maniben Devraj Shah** (supra), **(iv) State of Manipur** (supra) and aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Shakuntala Devi Jain** (supra), **N. Balkrishanan** (supra) and **Esha Bhattacharjee** (supra), are applicable against the appellant.

17. Consequently, this Court finds that appellant failed to satisfy this Court that he had sufficient cause for not preferring the appeal within prescribed period of limitation. Consequently, I.A. No.1/2019 is rejected.

18. In view of above, I.A. No. 2/2019 is also rejected.

19. Consequently, the instant miscellaneous appeal is also dismissed.

Sd/-

(Sharad Kumar Gupta)
Judge