



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2021

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P(MD)No.6011 of 2019

in C.M.A(MD).SR.No.20204 of 2019

WEB COPY

The Regional Director,
Employees' State Insurance Corporation,
143, Sterling Road, Chennai-34.

... Petitioner/Appellant/
Respondent

Vs.

M/s.Vairam Industries,
Through its Proprietor K.Anandakumar
Kuttimalai, Edamalaipatti Pudur,
Trichirappalli-620012.

...Respondent/Respondent/Petitioner

Prayer in C.M.P(MD).No.6011 of 2019: This petition is filed under Section 5 of the Limitation Act, to condone the delay of 1163 days in filing the above appeal.

Prayer in C.M.A(MD).SR.No.20204 of 2019: This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, 1948, against the Judgment and Decree dated 27.01.2016 passed by the ESI Court (i.e. Labour Court), Madurai in ESI OP.No.13 of 2005, uphold the coverage and the 45-A order dated 11.08.2004 and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellant.

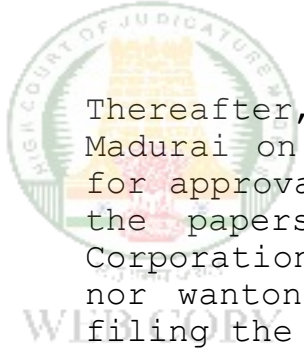
For Petitioner : Mr.P.Ganapathisamy
For Respondent : Mr.R.Vijayakumar

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 1163 days in filing the above appeal.

2. The instant case of the petitioner/Employees' State Insurance Corporation is related to the coverage and claiming of contributions for non-payment of contributions by the respondent unit herein under the ESI Act.

3. Learned counsel for the petitioner would submit that there was a huge delay of 293 days in applying certified copy of the order dated 27.01.2016, by the advocate of the ESI Corporation and it was applied only on 18.08.2016 and there was a delay in sending the judgment copy by the Panel Advocate to the Competent Authority to decide whether to implement the order of the ESI Court or to go for appeal and after taking a decision to file an appeal, the matter was sent to Sub-Regional Office, ESI Corporation, Salem, on 29.01.2019 to the Sub-Regional Office in Madurai for filing the appeal.



Thereafter, the case papers were given to the Panel Advocate in Madurai on 12.02.2019 and the same was sent to the ESI Corporation for approval on 04.03.2019 for want of some more documents. Finally, the papers were received by the Panel Advocate from the ESI Corporation only on 08.05.2019. Hence, the delay is neither wilful nor wanton and would pray to condone the delay of 1163 days in filing the above appeal.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and also perused the materials available on record.

5. In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others**, [2013 (5) CTC 547 (SC) : 2013 (5) LW 20], it was observed by the Supreme Court that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. The principles elucidated at paras 15 and 16 of the said judgment, are usefully extracted as follows:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(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.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) An Application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

(b) 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.



(c) 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.

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

6. Now coming to the present facts and circumstances of the case, though the learned counsel for the petitioner/ESI Corporation has narrated several administrative reasons for the delay of 1163 days in filing the above appeal, however, the delay is not minimal and it is a very long delay. In my considered opinion, it is very unfortunate that no convincing and acceptable reasons have been adduced by the petitioner/ESI Corporation for condoning the delay and therefore, this Court is not inclined to condone the delay of 1163 days in filing the appeal.

7. Accordingly, this petition is dismissed. In view of the order passed in CMP(MD)No.6011 of 2019, the connected C.M.A.(MD) SR.No.20204 of 2019 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judge,
Labour Court(ESI Court), Madurai

C.M.P(MD)No.6011 of 2019
in C.M.A(MD) .SR.No.20204 of 2019
02.02.2021

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