

24.02.2023
SL No.1
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A.T. 224 of 2021
IA No:CAN/1/2021, CAN/2/2021**

**Urmila Mondal @ Mila Mondal & Ors.
Vs.
The United India Insurance Company Ltd. & Anr.**

Mr. Amit Ranjan Roy
....for the appellants-claimants.

Mr. Rajesh Singh
...for the respondent No.1-Insurance Co.

This matter is appearing under the heading
“For Orders”.

On 20th February 2023 the application for
condonation of delay was heard and the matter has
been posted *“For Orders”* today.

Accordingly, the matter is taken up for
passing orders in respect of application for
condonation of delay.

CAN 2 of 2021

This is an application for condonation of delay
in preferring the appeal.

Mr Amit Ranjan Roy, learned advocate for
appellants-claimants submitted that the award was
passed on 8 December 2016 which was satisfied in
the month of April 2017 by the insurance company
beyond the period stipulated by the learned
tribunal. Further since the passing of the award the
appellants-claimants have consistently tried to

consult their learned advocate who conducted their case before the learned tribunal in order to prefer appeal, however, they came to learn that the conducting advocate Mr B.M. Karmakar had expired on 20 December 2020. Thereafter, the appellants-claimants contacted another advocate who immediately applied for getting the certified copy of the impugned award on 4 February 2021 and obtained the same on 18 February 2021 and the appeal has been preferred on 15 March 2021 and as such there was no intentional delay or laches on the part of appellants-claimants in preferring the appeal. Thus, the appellants-claimants being prevented from sufficient cause in filing the appeal within statutory period have prayed for condonation of delay of 1408 days. He further submitted that the court should lean towards liberal approach while dealing with application for condonation of delay. In support of his contention, he relied on the following decisions of Hon'ble Supreme Court.

- (i) *Ram Nath Sao @ Ram Nath Sahu & Ors versus Gobardhan Sao & Ors reported (2002) 3 SCC 195;*
- (ii) *State of Rajasthan & Anr versus Bal Kishan Mathur (D) Tr. Lrs & Ors reported 2014 SAR (Civil) 66.*
- (iii) *New Okhla Industrial Development Authority versus Rameshwar @ Ramesh Chandra Sharma (Dead) Thr Legal Heir & Anr reported in 2023 SAR (Civ) 70.*
- (iv) *Brahampal @ Sammay and Anr versus National Insurance Company (Civil Appeal 2926 of 2020).*

The application for condonation of delay has been keenly contested by respondent no.1-insurance company by filing affidavit-in-opposition to the said application.

Mr Rajesh Singh, learned advocate for insurance company submitted, at the outset, that the length of delay is immaterial and acceptability of explanation is the only criterion for dealing with an application for condonation of delay. No cogent reason has been cited by the appellants-claimants for preferring the appeal after almost 5 years. In support of his such submissions he relied on two unreported decisions of this Court passed in *Aziz Mandal & Anr versus Oriental Insurance Co. Ltd (FMAT 766 of 2016)* and *Triparna Mandal @ Triparna Mandal (Ghosh) & Ors versus National Insurance Co. Ltd (FMAT 1303 of 2019)*. Moreover, he submitted that in none of the cited decisions of Hon'ble Supreme Court there is inordinate unexplained delay as the case at hand and hence the ratio is not applicable. Furthermore, the claimants have received the awarded sum as granted by the learned tribunal without protest. Thus, the said application is wholly *malafide* and against established principle of law and hence should be dismissed *in limine*.

Having heard the learned advocates for the respective parties, I now proceed to decide the rival contentions raised in the present application.

As per report of Stamp Reporter dated 17 March 2021 there is delay of 1102 days in preferring the appeal.

In order to appreciate the prayer for condonation of such delay, it would be apposite to reproduce the relevant paragraph no.5 of the application stating the cause of such delay which is as follows.

“5. Your applicants state that the impugned judgment and award passed by the learned tribunal on 8 December 2016, inter alia, directed the respondent no.1 here in, to satisfy the awarded amount to the claimants within one month from the date of receipt of the copy of this order. The respondent no.1 did not satisfy the said awarded amount within the said stipulated period as directed by the learned tribunal, ultimately the said awarded amount satisfied by the respondent no.1 in the month of April 2017 to the applicants through the learned tribunal without explaining the delay of deposit. After realising the awarded amount and within the statutory period of appeal your applicants consulted of the case with the learned lawyer of the tribunal on record regarding enhancement of awarded amount and accordingly requested the learned lawyer of the tribunal on record to take immediate step of appeal and file an application for copy of the impugned award. On that occasion applicants have been assured will be informed accordingly. Your applicants state that your applicants several occasions tried to get in touch over telephone but they did not get any response from the learned lawyer. Ultimately in the end of January 2021 your applicants able to get in touch to the family of the learned advocate over telephone

and on that occasion your applicants were informed that learned advocate of the learned tribunal Mr B.M Karmakar expired on 20 December 2020 and also informed that before his demise in several occasions he was admitted in the hospitals, accordingly not able to do so many jobs as entrusted by the so many clients upon him. Without any alternative your applicants immediately came to Bardhaman District Judges Court and met with the learned advocate Mr Subhojit Mondal for necessary assistance. Accordingly on the instruction of the applicants certified copy of the impugned award has been applied on 4 February 2021 and the same was obtained on 18 February 2021. After getting such information about the copy of the impugned award, your applicants further able to meet with the learned lawyer of the tribunal in the 11 March 2021. On that occasion your applicants requested the learned lawyer Mr Subhojit Mondal to take immediate steps of appeal before the Hon'ble High Court and/or hand over all papers and documents before any learned lawyer of the Hon'ble High Court for preferring the appeal, or as it thinks fit. With regard to the request of the applicants, the learned the employee of the tribunal able to hand over all papers and documents along with copy of the impugned award to Mr Amit Ranjan Roy, learned advocate on 12 March 2021. Accordingly, the memorandum of appeal has been presented before the centralised computer section of the Hon'ble High Court on 15 March 2021 (Monday) through Mr Amit Ranjan Roy, learned advocate.”

It is trite law that once the court accepts the explanation is sufficient to condone such delay, it can exercise its discretion in the matter of condonation of delay irrespective of length of delay in preferring the appeal. The law relating to Limitation does not say that such discretion can be exercised only when the delay is within a certain limit. Length of delay is no matter, acceptability of

the explanation is the only criterion. Sometimes a long delay may be condoned on the ground of satisfactory explanation whereas a short delay may be not condonable due to want of acceptable explanation. Such principles have been observed by this Hon'ble Court *in Aziz Mandal's Case (supra) and Triparna Mandal @ Triparna Mandal (Ghosh)'s Case (supra)*.

Bearing in mind the aforesaid observation let me assess whether the explanation for delay is acceptable or not.

On going through the above contentions, it is found that the award has been satisfied in the month of April 2017. The claimants soon thereafter on realising the awarded amount consulted with their learned advocate regarding filing appeal for enhancement of the award and requested the learned advocate to take immediate steps for filing of the appeal and make an application for obtaining the certified copy of the impugned award. The claimant tried to get response from their learned advocates but failed. However, in January 2021 they came to know that the advocate on record before the learned tribunal Mr B.M. Karmakar had expired on 20 December 2020. It is relevant to note that there is no cogent reasons and satisfactory explanation of delay pertaining to the period from April 2017, when the award was satisfied, till January 2021 when the

claimants came to know about the demise of their learned advocate. The appellants-claimants have failed to make out a plausible ground explaining the delay for the aforesaid period. It is quite imprudent and hard to accept that the claimants who had the intention to file appeal would wait for more than three years to get response from their learned advocate. Therefore, in the absence of reasonable explanation for delay, I am inclined to dismiss the application for condonation of delay.

So far as the decisions of Hon'ble Supreme Court cited on behalf of the claimants are concerned, the facts are dissimilar to the case at hand and is therefore not applicable to the facts and circumstance of the present case.

Accordingly, the application being **CAN 2 of 2021** stands dismissed.

FMAT 224 of 2021

Since the present appeal is time-barred, the same is also hereby dismissed.

There shall be no order as to cost.

All connected applications if any, stands disposed of.

Urgent photostat certified copy of this order, if applied for, the given to the parties, upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)

