

08.09.2023
S.L.-231
Ct. No.-654
KB

**FMAT 576 of 2019
with
IA No. CAN 1 of 2021**

**Toton Ghosh
-Versus-
United India Insurance Co. Ltd. & Anr.**

Mr. Muktakesh Das
... For the appellant-claimant.

Mrs. Sucharita Paul
... For the respondent no.1-ins. co.

In Re : CAN 1 of 2021

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

As per the report of the Additional Stamp Reporter dated 1st July, 2019, there is delay of 2121 days in preferring the appeal.

Mr. Muktakesh Das, learned advocate for appellant-claimant submits that though the award was passed on 24th of May, 2013, yet due to economic hardship, the appellant could not file the appeal within the statutory period of limitation thereby resulting in delay of 2121 days in preferring the appeal. The award passed by the learned Tribunal was also not satisfied by the respondent no.1-insurance company. Due to his financial stringency and non-receipt of the awarded sum, the petitioner was prevented by sufficient cause in preferring the appeal within the statutory period. The showing of 'sufficient cause' is the only criterion for condoning the delay under Section 5 of the

Limitation Act. Referring to the decision of Hon'ble Supreme Court in ***Sabarmati Gas Limited versus Shah Alloys Limited*** reported in ***(2023) 3 SCC 229***, he submits that 'sufficient cause' is the cause for which a party could not be blamed. He further submits that the length of delay is not material if sufficiency of satisfactory explanation is established before the Court, which is a decisive factor for condonation of delay. To buttress his contention he relies on a decision of Hon'ble Supreme Court in ***Perumon Bhagvathy Devaswom, Perinadu Village versus Bhargavi Amma (Dead) By LRs & Ors.*** reported in ***(2008) 8 SCC 321***. Further placing reliance on the decision of the Hon'ble Supreme Court in ***Dr. Yashwantrao Bhaskarrao Deshmukh versus Raghunath Kisan Saindane*** reported in ***2021 SCC OnLine SC 914***, he submits that the Hon'ble Court condoned the delay after considering that a valuable right has accrued in favour of the petitioner. Thus, the Motor Vehicle Act being a beneficial legislation and entitlement of enhanced compensation is a valuable right of the petitioner, the delay in preferring the appeal requires to be condoned. In light of his aforesaid submission, he prays that since the petitioner was prevented from sufficient cause in preferring the appeal within the statutory period, delay of more than six years be condoned in the interest of justice.

In reply to the contention raised on behalf of the petitioner Mrs. Sucharita Paul, learned advocate for respondent no.1-insurance company submits from four

corners of the application no cogent reason has been cited by the appellant for preferring the appeal after six years. She further submits that the ground of financial hardship is a cooked up story since the materials on record shows that the victim opted to be treated in a private hospital instead of government hospital. Since no sufficient cause has been shown in the application for condonation of delay the prayer needs to be dismissed in limini.

Having heard the learned advocates for respective parties, I now proceed to decide the application in the backdrop of the rival contention raised by the parties.

The petitioner in the application for condonation of delay has precisely made out following grounds: (i) that since the passing of the judgment the award has not been satisfied; (ii) that the petitioner is suffering from financial problem and mental agony; (iii) that the petitioner did not have the capacity to move due to injuries.

So far as the first ground relating to award having not satisfied is concerned, during the course of argument, learned advocate for the petitioner has informed that no execution proceeding has been initiated by the claimant for recovery of the awarded sum granted in his favour by the learned Tribunal. The award being not satisfied cannot be a reasonable ground for not filing appeal within the statutory period.

As far as the second ground is concerned relating to the financial hardship of the claimant, nothing is placed

on record of his precarious financial status resulting in delay of more than six years. From the impugned judgment, it is found that at first the petitioner was treated in a government hospital but thereafter his parents shifted him to Apollo Gleneagles Hospital, Kolkata and spent a sum of Rs.94,000/- towards medical treatment therein. This aspect probabilises that the financial condition of the petitioner is not so stringent to prevent him from filing the appeal after six years. I find substance in the submission of Mrs. Paul, learned advocate for the respondent no.1-insurance company in this regard. Hence, such ground is not acceptable.

Lastly, with regard to the delay occurring due to difficulty in movement of the petitioner, it is found from the paragraph no. 2 of the application for condonation of delay that the petitioner himself met his learned advocate on 2nd June, 2019. There are no materials to suggest that the petitioner cannot move after the accident. Accordingly, this ground also does not stand to reason.

The grounds taken by the petitioner is not tenable and/or sustainable in the eye of law. There are no sufficient cause shown to condone delay of 2121 days in preferring the appeal.

It is a fact that length of delay is immaterial if such delay is supported by sufficient cause. It is trite law that once the Court accepts the explanation can exercise its discretion in the matter of condonation of delay irrespective

of length of delay in preferring the appeal. Further law relating to limitation does not show that such discretion can be exercised only when the delay is within a certain limit. The decisive factor is sufficient cause which lacking in the present cause.

The decisions of the Hon'ble Supreme Court cited on behalf of the petitioner are factually distinguishable from the case at hand and do not apply.

Therefore, in the absence of reasonable explanation of the delay, the application for condonation of delay is liable to be dismissed.

Accordingly, the application being **CAN 1 of 2021** stands dismissed.

In Re: FMAT 576 of 2019

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

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)