



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO.2316/2023 IN FIRST APPEAL ST. NO.11891/2023

The Cholamandalam MS General Insurance Co. Ltd. .Vs. Smt. Asha wd/o
Sanjay Sahare and Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Mrunal Naik, Advocate for applicant.
Mr. Savan Alaspurkar, Advocate for non applicant nos. 1 to 3.

CORAM : **ANIL L. PANSARE, J.**
DATE : **24.04.2024**

Heard Mrs. Mrunal Naik, learned counsel for applicant and Mr. Savan Alaspurkar, learned counsel for non applicant nos. 1 to 3.

2. The Insurance Company namely, the Cholamandalam MS General Insurance Company Ltd., has filed the present application under Section 5 of the Limitation Act, 1963 to condone the delay of 315 days in filing the appeal against the judgment and award dated 06.05.2022, passed by the learned Motor Accident Claims Tribunal, Amravati in Claim Petition No.441/2019.

3. Following are the reasons assigned for condoning the delay.

"2. It is submitted that the learned Member MACT Amravati has passed its judgment and award on 6/5/2022 in above mentioned claim petition no 441/19. There after the counsel for the Insurance Company came to know about the judgment, he immediately applied for certified copy of judgment on

9/6/22. The certified copy was received on 16/6/2022. The appellant has to file the appeal within limitation but due to official procedure and preparation time, the delay of 315 days is caused in filing present appeal. The delay is explained as under.

3. After receipt of certified copy of judgment on 16/6/2022. The dealing counsel for insurance company submitted his legal opinion and the certified copy of judgment to office at Amravati the advocate has gone to the judgment and found that the member MACT Amravati has not considered the defense of insurance company. Hence recommended the appeal. On his submission the Amravati office forward the file with opinion for getting confirmation to the Nagpur office.

4. The Nagpur Office after receiving this judgment sent the file to senior advocate for her opinion. The counsel has made legal scrutiny of matter and opined to challenge the same. On her opinion the office has decided to challenge the judgment. There after Nagpur office send the papers of the above mentioned matter to main Office at Chennai to file the appeal. The main office thereafter gave its consent to file appeal in HC.

5. The case papers were thereafter sent to the panel advocate for filing the appeal before the Hon'ble High court and directed to file appeal. Thereafter the dealing counsel has prepared the draft of appeal and submitted to RO for approval. After getting approval, the counsel has completed the formalities of filing. The amount of statutory deposit was deposited and court fees was obtained. There after the appeal is filed. Thus the delay of 315 days is caused in filing the appeal.

6. The delay caused in filing the present appeal is procedural delay caused due to procedures and formalities of Insurance Company. And due to complexity of the case. It is not an intentional delay. It was beyond the control of the present appellant. That there is a sufficient ground to condone the delay. Thus it is necessary to condone the delay.”

4. As could be seen, the judgment and award is passed on 06.05.2022. The applicant states that the counsel for the insurance company came to know about the judgment and immediately applied for the certified copy on 09.06.2022. It is surprising that the counsel was not aware of passing of the judgment for more than one month. The applicant has assigned no reason as to how could the counsel be unaware of passing of the judgment by the Tribunal.

5. The applicant then states that the dealing counsel submitted his legal opinion with certified copy of the judgment to the office at Amravati. When was that done, is conveniently not disclosed. The Amravati office then forwarded the file to the Nagpur office for getting confirmation of the opinion. Again, the date on which this action was done is not disclosed.

6. The applicant then states that, the office at Nagpur, after receiving the judgment, sent the file to the Senior Advocate for her opinion. When did the Nagpur office has received the file and when was it sent to the Senior Advocate, is not disclosed. The counsel has opined to challenge the same and on her opinion, the office has decided to challenge

the judgment. When was opinion given, is not disclosed. Why was the second opinion obtained, is also not disclosed.

7. The applicant states that the case papers were sent to main office at Chennai, which gave consent to file the appeal. Again, the applicant has not disclosed the date when the case papers were sent to Chennai office and when was consent given to file the appeal.

8. The applicant then states that these case papers were sent to panel advocate for filing appeal. The dealing counsel prepared draft appeal and submitted to the RO for approval. The approval was received and, thereafter, the formalities were completed. The amount of statutory deposit was deposited and the court fees was obtained. The details are again absent.

9. The applicant states that the delay is caused because of the procedural exigencies and complexity of the case. What is the complexity, is not shown to this Court.

10. To my mind, the reasons put forth by the insurance company will only show the casual and negligent manner, in which the sensitive case, which deals with the impact of accident on citizen's life, is being dealt with by the officers of the insurance company. Most time is spent in seeking opinions of the counsels and in transferring case papers from one office to another. This cannot be said to be a sufficient cause to condone the delay.

11. Learned counsel for the applicant has relied upon judgment of the Supreme Court in *Raheem Shah & Anr. Vs. Govind Singh & Ors., 2023 SCC OnLine SC 910*, to contend that while considering the application under Section 5 of the Limitation Act, 1963, the Court may adopt liberal approach. She has taken me through paragraph 4 of the judgment, wherein the Supreme Court has referred to a case of *Collector, Land Acquisition, Anantnag & Anr Vs. Ms. Katiji & Ors.; (1987) 2 SCC 107*, which has laid the rule for adopting liberal approach. The Supreme Court held that refusing to condone the delay can result in the meritorious matter being thrown out at the threshold and cause of justice will be defeated. As against this, when the delay is condoned, the highest, that can happen, is that a cause would be decided on merits, after hearing the parties. The Supreme Court has further observed that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and it is expected to do so. It is further observed that making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in institution of the appeal. The above principles have been read out to Court by the learned counsel for the applicant.

12. I have gone through the entire judgment. The Supreme Court has referred to *Anantnag's case*, in a peculiar background. One of the grounds for delay was that the judgment challenged was not in the knowledge of the appellants therein and there was a reason to believe the said

fact because the appellants had not taken effective part before the Trial Court, except for filing the written statement. The Court noted that the delay was only of 52 days. In this context, the Supreme Court referred to *Anantnag's case* and held that sufficient cause was shown. Thus, the main emphasis was on a sufficient cause being shown by the appellants and in that context, the principles for adopting liberal approach were noted. Such is not the case here.

13. As stated earlier, there is absolutely no justification put forth by the applicant for not approaching the Court in time. The applicant has not assigned any reason as to how the counsel, who appeared before the Tribunal, was not even aware for one month, of passing of the judgment. Thereafter, the applicant has consumed time for seeking opinion at various levels and in transferring the case papers from one office to another. With the aforesaid reasons, the applicant expects this Court to take a liberal approach in terms of the principles laid down in *Anantnag's case*.

14. The question is, whether, under the phrase of 'liberal approach', the Courts should let go the duty cast upon the appellant-applicant to show sufficient cause in approaching the Court belatedly? The answer finds place in yet another judgment of the Supreme Court in *Pathapati Subba Reddy (Died) by LRs and Ors. Vs. The Special Deputy Director (LA) [MANU/SC/0285/2024]*. The Supreme Court has considered the judgment in *Anantnag's case* and observed in paragraph 16 as under:

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. v. Katiji and Ors. MANU/SC/0460/ 1987 : 1987:INSC:54 : (1987) 2 SCC 107 : AIR 1987 SC 1353, this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day’s delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.”

15. Thus, the Supreme Court has, in clear terms, held that existence of sufficient cause for not filing the appeal in time, is a condition precedent for exercising discretionary power to condone the delay. The Court further clarified that the phrases ‘liberal approach’, justice-oriented approach’ and

cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

16. In fact, the Supreme Court in *Pathapati's case*, after referring to various rules on the law of limitation, summarized the principles for condoning the delay as under:

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

17. Thus, the Supreme Court has, inter alia, held that while adopting liberal approach, the Court should bear in mind that the approach will not defeat the substantive law of the limitation contained in Section 3 of the Limitation Act, 1963 and further, merits of the case are not required to be considered in condoning the delay.

18. Thus, the judgment in the case of *Raheem Shah & anr. (supra)*, will be of no assistance to the applicant unless sufficient cause is shown. To expect from the Court a liberal approach, the officers, like the applicant, are/were duty bound to show that despite due diligence and bona fide efforts, the appeal could not be filed within stipulated time because of certain administrative exigencies, which were beyond their control. The officials are under a special obligation to ensure, particularly, in the sensitive cases like claims arising out of motor accidents, that they perform their duties with due diligence and commitment. Such is not the case here. The file has been handled in a most casual manner.

The details of movement of files are not mentioned. What efforts were made to get timely opinion is absent. The time required at different levels is not explained. Thus, there is no merit in the application. The application is accordingly rejected.

19. The applicant shall deposit, with the concerned Tribunal, the decretal amount within eight weeks from today under intimation to the claimants.

(Anil L. Pansare, J.)

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