



-2511-2023

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO. 2511 OF 2023
IN FIRST APPEAL ST. NO. 12041 OF 2023

(Bhupendra s/o Rajeshwar Mishra Vs. Nidhi w/o Vikrant Jain & Anr.)

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

Court's or Judge's orders.

Ms R.S. Mankar h/f Shri P.S. Mirache, Counsel for the
applicant/appellant.

Ms A.A. Pande, Counsel for respondent no.2.

None for respondent no.1.

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CORAM : ANIL L. PANSARE, J.
MARCH 27, 2024.

The applicant has filed application under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 393 days in filing appeal under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 30/6/2021 passed by the Member, Motor Accident Claims Tribunal – 3, Nagpur in Claim Petition No. 696/2014. While calculating delay, the applicant has excluded period of Covid-19 pandemic.

2] The learned Counsel for the applicant submits that the delay has occurred because the applicant had suffered 30% permanent disability and, therefore, has restriction of movement. He is dependent on family members. He could not continue his job and, thus, lost the source of income. He had insufficient funds for payment of Court fee and other expenses.

3] On 3/1/2024, the following order was passed :

“The ground for delay is that the applicant had lost his job and had no money to pay even court fee stamp to the tune of Rs.4,215/-.

2] The applicant was working as an Accountant. The learned Counsel for the applicant submits that the applicant was required to incur his savings in medical expenses.

3] The applicant shall place on record the documents in support, which should include the statement of his bank account/s for the period under question.

4] Stand over one week.”

4] Thereafter, on 15/2/2024, the following order was passed :

“In compliance of the order dated 03.01.2024, by which the applicant was directed to place on record documents in respect of his claim that he had no money, the applicant has filed only copy of bank statement to show that the amount available with the applicant was Rs.742.18/- as against the requirement of Rs.4,215/- (Court fee amount).

When inquired, counsel for applicant states that the applicant is employed in a private company as a Mechanic and getting salary of Rs.15,000/- per month. When inquired as to why salary is not reflected in the account, the counsel states that the salary has been paid in cash. The details of expenses have been not given. Thus, there is no satisfactory explanation as regards availability of funds.

The counsel shall file affidavit of the employer as regards payment of salary in cash as also details of expenses made to justify that he was not having Rs.4215/- to pay/deposit the court fee, which ultimately resulted into delay in filing the appeal.

The counsel for the non applicant no.2 – insurance company states that the entire amount of compensation has been paid to the applicant. Perusal of award indicates that the compensation of Rs.4,65,757/- along with interest at the rate of 6.5% per annum was

awarded. If that be so, there appears no justification why the applicant could not pay the meagre amount of court fee of Rs.4275/-.

The applicant, by way of affidavit, shall justify the stand taken by him in the light of the submissions made by counsel for the non applicant no.2.

Stand over to 28.02.2024.”

5] As could be seen, on 3/1/2024, the applicant was said to be working as an Accountant. On 15/2/2024, the learned Counsel for the applicant stated that the applicant was working as Mechanic. The learned Counsel for respondent no.2 has invited my attention to paragraph 19 of the award, which indicate that the applicant was working as an Advertising Manager and was getting an amount of Rs.25,000/- per month.

6] Thus, the applicant has changed his version, as regards his employment. The applicant has, thus, made an incorrect statement on the point of his employment. He has not disclosed the details of expenses or the details of utilization of the compensation received by him.

7] The Hon'ble Supreme Court in the case of *Pundlik Jalam Patil (Dead) By LRs. Vs. Executive Engineer, Jalgaon Medium Project and Another [(2008) 17 SCC 448]* has held that an incorrect statement made in an application seeking condonation of delay itself is sufficient to reject the application without any further enquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. The Court further held that a party taking a false stand to get rid of the bar of limitation should not be encouraged

to get any premium on the falsehood of his theory by condoning the delay.

8] Thus, the Supreme Court held that a single incorrect statement made by the applicant to get rid of bar of limitation will disentitle him for any relief. The applicant herein has made incorrect statement on employment and earnings to set forth that he had no money to purchase Court fee. He has further suppressed the utilization of compensation received by him. He has not disclosed the details of expenses incurred by him. Accordingly, on the count of making incorrect statement, the application is liable to be rejected.

9] The other ground for delay is shortage of funds to pay stamp duty. The applicant failed to give any satisfactory answer as regards shortage of funds despite orders passed by this Court. However, even this ground is not sufficient to condone the delay. The Supreme Court in the case of *Ajay Dabra Vs. Pyare Ram and Others* [2023 SCC OnLine SC 92], while dealing with ground of being short of funds to pay the Court fee to condone the delay, referred to Section 149 of the Civil Procedure Code, 1908, which refers to power to make up deficiency of Court fee and held thus :

“6. It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870. In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to

the incorporation of Section 149 in CPC would explain this aspect.

7. XXXX

8. XXXX

9. *In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima [AIR 1951 ALL 64] wherein it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured. XXXX*

10. XXXX

11. *We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done."*

(emphasis supplied)

10] Thus, the Supreme Court has held that the appellants therein could have filed the appeal deficient in Court fee and made good subsequently. Nothing prevented the applicant herein from adopting such a mode.

11] Thus, on both count, i.e., making an incorrect statement and shortage of funds to pay Court fee, the delay cannot be condoned. In fact, this is a fit case where the application ought to be rejected with costs for making misleading statements before the Court. However, considering the fact that the applicant has suffered disability in vehicular accident, I restrain from imposing costs while dismissing the application.

12] Resultantly, for want of sufficient cause, the application is rejected.

(ANIL L. PANSARE, J.)

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