



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

L APPLICATION NO.3194/2023 IN FIRST APPEAL ST. NO.14726/2023

United India Insurance Company Ltd. Vs. Ramsingh Jagansingh Solanki
(Deleted) and Ors.

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

Court's or Judge's orders

Mr. C. A. Anthony, Advocate for applicant.

CORAM : ANIL L. PANSARE, J.

DATE : 14.03.2024

Applicant-United India Insurance Company Ltd., a statutory corporation, has filed the present application under Section 5 of the Limitation Act, 1963 seeking to condone the delay of 79 days in filing appeal against the judgment and award dated 30.01.2023 passed by Motor Accident Claims Tribunal, Gondia in Claim Petition No.5/2006.

2. The delay has been allegedly explained in the following terms.

“2. That due to procedural formalities of the appellant company, delay has been caused in preferring the appeal. The Regional Office of the appellant Co. is centralized at Nagpur and all Branch Offices and the Divisional offices are located at different district which are under the jurisdiction of Regional Office.

3. That, the claim petition pertains to MACT Gondia, the Judgment and award was passed on 30.01.2023, by the Tribunal, the copy was received on 09.02.202. The certified copy of the judgment and award was received by the Branch Office of Gondia from its dealing advocate in the third week of Feb, 2023. The Branch Office forwarded the Judgment and award to the Divisional Office in the

1st week of March, 2023 along with the office record, thereafter the Divisional Office found that excess compensation has been awarded hence in the month of Jan, 2023 forwarded the judgment and award along with office record to the Regional Office at Nagpur with a recommendation for preferring appeal on the ground of quantum.

4. That the Regional Office at Nagpur after perusal of the judgment and award seeks opinion from senior advocate whether award is to be satisfied or appeal should be preferred, prior to allotting the case paper to the panel advocate for preferring appeal, in the said process sufficient time is consumed.

5. That the case papers were sent for preferring the appeal to the present counsel in the last week of April, 2023. The Regional Officer was immediately informed about mandatory deposit and Court fees which are to be deposited at the time of preferring an appeal: it took time to deposit the award amount. Thus, it will be seen that every possible efforts are made to avoid delay. The delay caused in preferring this appeal is unintentional caused only due to procedural office formalities.”

3. As could be seen, the delay has occurred due to procedural formalities. The applicant has not explained as to why was certified copy, which was received on 09.02.2023, forwarded in the third week of February and not prior thereto. The Branch Officer, took more than a week to forward the award to the Divisional Officer, who took his own time to forward the copy of award to the Regional Office at Nagpur. The opinion of the Senior Advocate has been obtained. The name of Senior Advocate is not even disclosed. Case papers were then sent in the last week of April. Thus,

there is absolutely no justification for the time taken by one office to forward the case papers to another. The applicant has consumed about two months in this process. Ultimately in the last week of April, the case papers were sent to the counsel. Thereafter, the applicant has made arrangement of Court Fee and ultimately the application is filed in June, 2023.

5. The justification, as put-forth, is far from acceptable norms. It is well settled that the applicant need not explain delay of each day, at the same time, the applicant is bound by law of limitation, and therefore, duty bound to show sufficient cause for not filing Appeal in time. The Hon'ble Supreme Court in the case of **State of Madhya Pradesh And Others V/s Bherulal, (2020) 10 SCC 654** has held that law of limitation undoubtedly binds everybody including the Government and deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies.

6. The effect of delay has been explained by the Supreme Court in the case of **Ramlal V/s Rewa Coalfields Ltd. AIR 1962 SC 361**. The Supreme Court, while interpreting Section 5 of the Limitation Act held thus:

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the

decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed.”

7. So far as time consumed in procuring of Court Fee is concerned, the Supreme Court in the case of **Ajay Dabra Vs. Pyare Ram and ors.,** reported in **2023 SCC Online SC 92,** while dealing with ground of being short of funds to pay the Court Fee to condone the delay, has 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.

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 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.....

10.

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 now)

8. Thus, the Supreme Court has held that the appellants could have filed the appeal deficient in court fee and made good subsequently. Nothing prevented the applicant herein from adopting such a mode. Applicant is equipped with panel of advocates who ought to be aware of the scope of Section 149 of the Code. Thus, justification for delay on account of court fee is not acceptable.

9. Thus, in absence of sufficient cause, legal right which has accrued in favour of the decree-holder by lapse of time should not be lightheartedly disturbed.

10. The learned Counsel for the applicant states that there are certain administrative difficulties and it takes time for movement of file.

11. The ground of administrative difficulty will have to be dealt with in terms of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short, 'the Act of 2005'), which reads thus:

"10. (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible:

Provided that, normally no file shall remain pending with any Government servant in the Department or Office for more than seven working days:

Provided further that, immediate and urgent files shall be disposed of as per the urgency of the matter, as expeditiously as possible, and preferably the immediate file in one day or next day morning and the urgent file in four days:

Provided also that, in respect of the files not required to be referred to any other Department, the concerned Department shall take the decision and necessary action in the matter within forty-five days and in respect of files required to be referred to any other Department, decision and necessary action shall be taken within three months.

(2) Any willful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate 1. [disciplinary action under the All India Services (Discipline and Appeal) Rules, 1969, the] Maharashtra Civil Services (Discipline and Appeal)

Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

(3) The concerned competent authority on noticing or being brought to its notice any such dereliction of duties on the part of any Government servant, after satisfying itself about such dereliction on the part of such Government servant shall, take appropriate disciplinary action against such defaulting Government servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Government servant.”

12. As could be seen, sub-section (1) of Section 10 of the Act of 2005 provides that every Government servant shall discharge his official duties assigned or pertaining to him most diligently and expeditiously and that no file shall remain pending with any Government servant in the department, usually for more than seven working days. Thus, additional time taken will have to be properly justified. In addition, Rules 10 to 13 of the Maharashtra Prevention of Delay in Discharge of Official Duties Rules, 2013 (for short “the Rules of 2013) provides for detailed mechanism to prevent/avoid delay. Despite such a provision and several judgments of the Supreme Court deprecating casual approach in processing files, there is no improvement.

13. There is a reason for the same and the reason is not taking action, provided under sub-sections (2) and (3) of Section 10. It is unfortunate that the effect of sub-section (1) of Section 10 has been neutralized by not taking recourse to sub-sections (2) and (3) of Section 10. Resultantly, the casual approach of Government servants continue.

14. Considering the Judgment cited above and the provisions of the Act of 2005 and Rules of 2013, vis a vis justification given by the applicant in paragraph Nos.2 to 5 of the application, in my considered view, the applicant has miserably failed to show any cause, muchless sufficient cause, to condone the delay.

The application is, therefore, rejected.

15. Copy of order be forwarded to appointing authority of the respective officials responsible for delay, for taking an action in terms of sub-section (2) and (3) of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, of course, after giving an opportunity of hearing to concerned officials.

(Anil L. Pansare, J.)