



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

CIVIL APPLICATION (CAF) NO. 238 OF 2024

IN

FIRST APPEAL (ST) NO. 20359 OF 2023

(The Controller, Maharashtra State Road Transport Corporation V/s Sudhakar Manikrao Yende (dead) through L.Rs.)

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders

Court's or Judge's orders

Mr. G. G. Barapatre, Advocate h/f Mr. V. H. Kedar,
Advocate for Applicant/Appellant.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 03, 2024.

. Heard.

2. The Applicant – Maharashtra State Road Transport Corporation (*for short, 'the MSRTC'*) has filed the present Application under Section 5 of the Limitation Act, 1963 seeking to condone the delay of 372 days in filing Appeal against the Judgment and Award dated 1/7/2022 passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No. 986/2013.

3. The Applicant - MSRTC has assigned following reasons in support.

“2. That the appellant have applied for certified copy for judgment and award on 6/1/2023 and the copy was supplied to the appellant by the record keeper of learned District Court, Nagpur on 7/2/2023. It is submitted that after the copy was received by the counsel for the appellant, further

send to the Divisional Controller, Nagpur. It is further submitted that after the receipt of the copy by the Divisional Controller of the appellant, the copy of the judgment was further send to the Deputy General Manager, Legal Department, Mumbai by the Divisional Controller on 20/8/2022. It is respectfully submitted that after perusal of the entire record, it is advised by the Legal Department, Mumbai of the appellant on 30/11/2022 to prefer an appeal against the impugned judgment and award dated 1/7/2022 before the Hon'ble High Court by preferring First Appeal.

3. It is respectfully submitted that for sending file together with the copy of judgment and award from counsel to the Divisional Controller, Nagpur and further from Divisional Controller, Nagpur to the Deputy General Manager, Legal Department, Mumbai, the limitation for filing appeal was over. The last day of limitation for filing appeal was 4/10/2022. After receipt of the letter from Mumbai, by the Divisional Controller, the said letter together with the copy of award was given to the counsel for drafting appeal. It is submitted that, the counsel for the appellant after receipt of the letter given necessary letters for providing the cheque of Rs. 25,000/- to deposit the statutory amount under Section 173 of the Motor Vehicle Act. After receipt of the amount court fees from the Divisional Controller, the counsel for the appellant has deposited the same with the stamp vendor immediately for obtaining the court fee stamp for filing the instant appeal.”

4. Thus, the Applicant states that the Award was passed on 1/7/2022 and the dealing Counsel applied for certified copy on 6/1/2023. The Applicant further states that the certified copy of Award was delivered on 7/2/2023. There is nothing in the Application as to what prevented Applicant from applying for certified copy for six months i.e. from 1/7/2022 to 6/1/2023.

5. Further I have gone through the certified copy of Award. The remark of the Record Keeper indicates that certified copy was applied for on 6/1/2023. The application, however, was completed in all respect on 6/2/2023. Thus, for 30 days the application itself was not completed, and therefore, there arises no question of processing the application. This fact has been suppressed by the Applicant and a picture is projected as if it had applied for certified copy on 6/1/2023 and copy was delivered on 7/2/2023. Thus, an incorrect statement has been made by the Applicant to get rid of the period of limitation.

6. The Hon'ble Supreme Court in the case of ***Pundlik Jalam Patil (Dead) by L.Rs. V/s Executive Engineer, Jalgaon Medium Project and Another, (2008) 17 Supreme Court Cases 448*** held that an incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averment 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. Thus, on this count itself the Application is liable to be rejected.

7. Further the Applicant states that the certified copy which was obtained on 7/2/2023 was sent to the Divisional Controller, Nagpur. After receipt of the said copy Divisional Controller sent it to the Deputy General Manager, Legal Department, Mumbai on 20/8/2022 (it must be 20/8/2023). Why

did it take 25 weeks for the same is not explained. After perusal of entire record, the Deputy General Manager, Legal Department advised to prefer an Appeal against the impugned Judgment and Award on 30/11/2022. What efforts were made to get legal opinion expeditiously is not mentioned. Ultimately the Appeal is filed on 6/10/2023.

8. This is how the delay is sought to be explained by the Applicant – Insurance Company.

9. To my mind, the reasons put-forth by the MSRTC will only show the casual and negligent manner, in which the sensitive cases, which deals with the impact of accident on citizen's life, is being dealt with by the Officers of the MSRTC. Firstly, the Applicant took six months to apply for certified copy. Thereafter most time is spent in seeking opinion of the Counsels and in transferring case papers from one office to another. This cannot be said to be sufficient cause to condone the delay.

10. 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 binds everybody including the Government and deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies.

11. In the case of ***Basawraj and Anr. V/s The Spl. Land Acquisition Officer, AIR 2014 SC 746***, the Hon'ble Supreme Court has held in paragraph No.15 as under :

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

12. Thus, the Supreme Court has held that if the party is found to be negligent or found to have remained inactive, there cannot be a justified ground to condone the delay. The Court further held that in case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, imposing any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. Thus, delay cannot be condoned by imposing any condition, viz – by directing Insurance Company to deposit entire amount of compensation or by imposing cost etc.

13. The Supreme Court in the case of ***Ramlal V/s Rewa Coalfields Ltd. AIR 1962 SC 361*** has, in a way, explained the effect of delay. The 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.....”

14. 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.

15. Another reason quoted by the Applicant – MSRTC is, requirement of court-fees. As such, the time spent in procuring court-fees is not being disclosed. However, the Applicant ought to have made necessary arrangement well within time, and in any case, could have filed the present Application taking recourse to Section 149 of the Code of Civil Procedure, 1908, which provides for filing Appeal deficiency in Court-fees and make good subsequently.

16. The Supreme Court in the case of ***Ajay Dabra Vs.***

Pyare Ram and Ors., 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.

7.

8.

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)

17. 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. The 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-fees is not acceptable.

18. The Tribunal has held the Applicant – MSRTC liable to pay compensation along with interest at the rate of 6.5% per annum. Thus, the amount of compensation will carry interest at the rate of 6.5% per annum. The delay will naturally increase the component of interest. Thus, the negligence of officials of the MSRTC will not only cause harassment to the claimants, but will also increase the component of interest. The officials do not bother because it doesn't affect their pocket. This mindset will change only when the additional component of interest, which is accrued

because of negligence or inaction of official, is recovered from these officials.

19. In the case of ***State of U. P. & Ors. V/s Ashwani Kumar Mishra in Special Leave Petition (Civil) Diary No.(s). 19834/2020*** the plea put-forth for condonation of delay before the Supreme Court was, getting departmental approval and the delay is not deliberate or intentional. The Supreme Court held that such kind of excuses are no more admissible in view of the judgment in the case of ***Post Master General & Ors. V/s Living Media India Ltd. & Anr. (2012) 3 SCC 563***. The Supreme Court, while dismissing the Special Leave Petition, gave liberty to the State of U. P. to recover the loss from the Officers responsible for the delay in filing the Special Leave Petition, if they are so advised.

20. Similar such order has been passed by the Supreme Court in the case of ***Deputy Conservator of Forests V/s Timblo Irmaos Ltd. & Ors. in Special Leave Petition (Civil) Diary No(s). 19059/2020***. Before passing such order to recover costs from the erring officer, the three Judges Bench of the Court has observed as under :

“ We have dealt with the issue of Government authorities in approaching Courts belatedly as if the Statute of Limitation does not exist for them. While referring to some reasons given for insufficiencies, we observed that the parties cannot keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government, (Collector, Land Acquisition, Anantnag & Anr. (supra). This situation no more prevail and this position had been elucidated by the

judgment of this Court in office of the Chief Post Master General & Ors. V/s Living Media India Ltd. & Anr. (2012) 3 SCC 563.”

21. Thus the Supreme Court has, time and again, deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies. There is, however, no improvement. Rather the plea of liberal exercise of powers and for giving certain leeway to the State authorities is put-forth.

22. The officials must understand that for accepting the plea of liberal approach, they ought to show that despite diligent efforts, the Appeal could not be filed because of certain administrative exigencies, which were not in their control. Such is not the case here. The file has been handled in a most casual manner. The applicant did not even apply for certified copy of the award for six months. The details of movement of files are not mentioned. What efforts were made to get timely opinion is absent. The time required for approval of amount to be deposited and for procurement of court-fees is not justified. A false statement is made as regards time taken from the date of making application for certified copy till getting certified copy. This fact that the application itself was incomplete for 30 days is suppressed. The delay is thus not properly calculated. Resultantly, even if delay as prayed is condoned, the Appeal cannot be registered and processed for adjudication. There is, thus, no end to negligence.

23. Put altogether, the Applicant has miserably failed to show any cause, much less sufficient cause, to condone the delay. The Civil Application is accordingly rejected.

24. The Applicant shall deposit with the concerned Tribunal the decretal amount within four weeks from today under intimation to the Claimants.

25. The copy of order be served upon the Chairman and Managing Director of Maharashtra State Road Transport Corporation, ST Stores & Purchase Department, ST Depot, Jahangir Boman Behram Marg, Mumbai Central, Mumbai for taking appropriate action against the erring official, and if so advised, may proceed to recover the amount of additional cost of interest from them. The Authority may also take action in terms of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. The order shall be complied by 30/6/2024. Reporting compliance of the instant order will be appreciated.

(ANIL L. PANSARE, J.)