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

CIVIL APPLICATION (CAF) NO. 262 OF 2024
IN
FIRST APPEAL (ST) NO. 9345 OF 2023
(The United India Assurance Company & Anr. V/s Pushpa Parmeshwar Hatwar & Ors.)

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

Mr. B. P. Bhatt, Advocate for Applicants/Appellants.

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

Heard.

2. The Applicants have filed the present Application under Section 5 of the Limitation Act, 1963 seeking to condone the delay of 72 days in filing Appeal against the Judgment and Award dated 7/11/2022 passed by the Motor Accident Claims Tribunal, Nagpur in M.A.C.P. No. 1262/2011.

3. The Applicants have assigned following reasons in support.

> *"2. The Appellant submits that the learned Member of Tribunal passed award 7/11/2022. Dealing counsel applied for certified copy on 9/11/2022, certified copy was delivered on 21/11/2022, and thereafter he apprised the concerned D.O. regarding passing of aforesaid award.*
> *3. After getting information about passing the award, Divisional Office (D.O.) sought legal opinion for filing appeal and then forwarded the case papers to the appellant office in*

> *January, 2023 and then the appellant office (Regional Office) also sought legal opinion for filing appeal and then referred the case to the competent authority who suggested for filing appeal against the award. Thereafter case file was sent for approval and then finally concerned officer approved the case file for preferring the appeal against the award passed by the Member Motor Accident Claims Tribunal, Nagpur District Nagpur, in M.A.C.P. No.1262/2011 and lastly in third week February, competent authority approved the file for filing appeal before this Hon'ble Court, and then in 3rd week of March, 2023 case papers file received by Advocate. For preparation of appeal and getting approval for court fee and deposit of statutory amount, substantial time got to be consumed.*
>
> *4. The appellant submits it is one of the premier General Insurance Companies owned by the Government of India. For filing first appeal before this Hon'ble Court, usually case file moves one table to another for approval and therefore 72 days delay caused in filing appeal."*

4. Thus, the Applicants state that the Award was passed on 7/11/2022 and the dealing Counsel applied for certified copy on 9/11/2022. The Applicants further state that the certified copy of Award was delivered on 21/11/2022**.**

5. I have gone through the certified copy of Award. The remark of the Record Keeper indicates that certified copy was applied for on 9/11/2022. The application, however, was completed in all respect on 17/11/2022. Thus, for eight days the application itself was not completed, and therefore, there arises no question of processing the application. The Applicant, therefore, is responsible for delay of these eight days. Further, the Applicants

were given a date to collect the certified copy on 19/11/2022 and the copy was also ready for delivery on that date, but the copy has been collected on 21/11/2022. The Applicants have assigned no reason why was certified copy not collected on 21/11/2022.

6. Thus, the Applicants are responsible for 8-10 days for remaining inactive either in completing the application or in collecting the certified copy. This fact has been suppressed by the Applicant and a picture is projected as if the Applicant had applied for certified copy on 9/11/2022 and copy was delivered on 21/11/2022. Thus, an incorrect statement has been made by the Applicant to get rid of the bar of limitation.

7. 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.

8. Further the Applicants state that certified copy was delivered on 21/11/2022 and thereafter the Applicants apprised

the concerned Divisional Office regarding passing of aforesaid Award. After getting information about passing of Award, the Divisional Office sought legal opinion for filing appeal and then forwarded the case papers to the Regional Office in January, 2023 and then the Regional office sought legal opinion for filing appeal and referred the case file to the competent authority who suggested for filing appeal against the Award and lastly in third week of February the competent authority approved the file for filing Appeal. What efforts were made to get legal opinion expeditiously is not mentioned. The case papers were forwarded to the Advocate for preparing Appeal in third week of March, 2023 and after getting approval for court fee and deposit of statutory amount the Appeal is filed on 29/4/2023.

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

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 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.

11. In the present case, the decree-holders are victims of the accident. They are waiting for the compensation. The Officers

of the Insurance Companies ought to have been sensitive in handling the file. The Applicants – United India Insurance Company Ltd. is a public sector Insurer and is thus governed by the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

12. The ground of administrative difficulty will have to be, therefore, 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 provides as under :

> *"10. (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most deligently 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 wilful 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."*

13. 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.

14. 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 rigor 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 and on top of it, the judgments of the Supreme Court are cited to argue as if the Government Servants have license to sit over the files and to expect the Courts to take liberal view.

15. Let me refer to some Judgments on the point of condonation of delay.

16. 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.

17. 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."*

18. 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.

19. 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................."*

20. 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.

21. Another reason quoted by the Applicants is, requirement of court-fees. As such, the time spent in procuring court-fees is not being disclosed. However, the Applicants 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.

22. 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)

23. 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.

24. The Tribunal has held the Applicants jointly and severally liable to pay compensation along with interest at the rate of 7.5% per annum from the date of filing of application till recovery of the entire amount. Thus, the amount of compensation will carry interest at the rate of 7.5% per annum. The delay will naturally increase the component and interest. Thus, the

negligence of officials of the Insurance Companies 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.

25. 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.

26. 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."

27. 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.

28. 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 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. The fact that the application itself was incomplete for eight 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.

29. This conduct of the officials, if scrutinized on the touch stone of the provisions of the Act of 2005, every officer handling the case papers will be responsible for action in terms of sub-section (2) and (3) of Section 10 of the Act of 2005.

30. Thus, the officials of the Insurance Company are not following the mandate under sub-section (1) of Section 10, nor are they taking cognizance of Section 5 of the Limitation Act which requires sufficient cause to prefer Appeal beyond the period of limitation. There is not a whisper as to why could not they follow mandate of Section 10 of the Act of 2005. Had the same been adhered to, the delay would not have occurred.

31. Most importantly, the casual and negligent approach is found only with the pubic sector Insurers and not private sector Insurers. The Law of Limitation cannot be applied with different parameters to the private and public sector Insurers.

32. Put altogether, the Applicants have miserably failed to show any cause, much less sufficient cause, to condone the delay. The Civil Application is accordingly rejected.

33. The Applicants shall deposit with the concerned Tribunal the decreetal amount within eight weeks from today under intimation to the Claimants.

34. The copy of order be served upon the Chairman-Cum-Managing Director of the United India Insurance Company Ltd., 24, Whites Road, Chennai -600014 for taking appropriate action in accordance with Section 10 of the Act of 2005, and if so advised, may proceed to recover the amount of additional cost of interest from the erring officials. The order shall be complied by 30.06.2024. Reporting compliance of the instant order will be appreciated.

(ANIL L. PANSARE, J.)

Later on:

Advocate Mr. B. P. Bhatt, appeared. He has been informed that the application has been rejected.

(ANIL L. PANSARE, J.)

vijaya

Signed by: Mr. N.S. Nikhare
Designation: PA To Honourable Judge
Date: 10/04/2024 20:05:06