



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

CIVIL APPLICATION (CAF) NO. 346 OF 2024

IN

FIRST APPEAL (ST) NO. 25485 OF 2023

(The New India Assurance Company Ltd. V/s Smt. Tejasvini Avinash Gawande & Ors.)

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. S. H. Bhatia, Advocate for Applicant/Appellant.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 03, 2024.

. Heard.

2. The Applicant – New India Assurance Company has filed the present Application under Section 5 of the Limitation Act, 1963 seeking to condone the delay of 95 days in filing Appeal against the Judgment and Award dated 8/6/2023 passed by the Motor Accident Claims Tribunal, Yavatmal in M.A.C.P. No. 70/2020.

3. The Applicant – Insurance Company has assigned following reasons in support.

“2. That as the impugned Judgment and Award was passed and the fact regarding the same was informed by the counsel appearing for the Applicant before M.A.C.T. Yavatmal, the Applicant immediately asked for applying certified copy of the impugned Judgment and Award along with other relevant papers supporting case of the Applicant. The application for obtaining certified copy of the impugned

Judgment and Award dated 8/6/2023 was made on 12/6/2023 and the certified copy of the impugned Judgment and Award was received on 27/6/2023.

3. *The relevant documents were then forwarded to the Regional Office for taking decision whether to challenge the impugned judgment and award passed by M.A.C.T. Yavatmal. The Judgment and documents were examined at the regional office by the Chief Regional Officer and it was decided to prefer First Appeal before this Hon'ble High Court. The panel advocate was contacted and papers were handed over to her with instructions to file Appeal.*

4. *That the panel advocate accordingly drafted the Appeal and draft thereafter was sent for approval and the same was subsequently approved for filing. That Court fees and mandatory deposit of Rs.25,000/- was arranged by the Applicant for filing Appeal. In this process there is delay of 95 days in filing the Memo of Appeal."*

4. Thus, the Applicant states that the Award was passed on 8/6/2023 and the dealing Counsel applied for certified copy on 12/6/2023. The Applicant further states that the certified copy of Award was delivered on 27/6/2023.

5. I have gone through the certified copy of Award. The remark of the Record Keeper indicates that certified copy was applied for on 12/6/2023. The application, however, was completed in all respect on 23/6/2023. Thus, for 11 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 11 days. Further, the Applicant was given a date to collect the certified copy on 22/6/2023 and the copy was also ready for delivery on 23/6/2023, but the copy has

been collected on 27/6/2023. The Applicant has assigned no reason why was certified copy not collected on 23/6/2023. The Counsel ought to have contacted concerned official on 22/6/2023. He did not, nor is any reason assigned for not collecting copy. The Applicant, therefore, is further responsible for 4 days of its inaction.

6. Put together, the Applicant has remained inactive for 15 days in completing the application and in collecting the certified copy. This inaction of 15 days has been suppressed by the Applicant and a picture is projected as if it had applied for certified copy on 12/6/2023 and copy was delivered on 27/6/2023. 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. In any case, this inaction having been not explained, the Applicant ought to add these 15 days in the prayer seeking condonation of delay. In

absence thereof, the delay of these 15 days cannot be condoned.

8. Further the Applicant states that certified copy was delivered on 27/6/2023 and thereafter the documents were forwarded to the Regional Office for taking decision whether to challenge the impugned Judgment and Award passed by M.A.C.T. Yavatmal. When were documents forwarded is not mentioned. The Judgment and documents were examined at the Regional Office by the Chief Regional officer and decided to prefer First Appeal before the High Court. How much time was taken for this process is not disclosed. The panel advocate was contacted and papers were handed over to her with instructions to file Appeal. Again, the details are absent. Accordingly, the panel Advocate drafted the Appeal and draft thereafter was sent for approval and the same was subsequently approved for filing. Again the details are absent. Thereafter the panel Advocate prepared Appeal and deposited cheque towards the mandatory deposit of Rs.25,000/- and procured the court-fees. Again the Applicant has kept court guessing as regards time taken for preparing Appeal and in procurement of court-fees. Ultimately, the Appeal is filed on 22/12/2023.

9. The Applicant has, thus, not disclosed any details of time taken right from collecting certified copy till Appeal is filed. This only indicates 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.

10. On the point of condonation of delay, 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.

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 – Company is, requirement of court-fees. As such, the time spent in procuring court-fees is not 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 driver - Respondent No.5, owner and Insurance Company of offending vehicle jointly and severally liable to pay compensation along with interest at the rate of 6% per annum. Thus, the amount of compensation will carry interest at the rate of 6% per annum. The delay will naturally increase the component of interest. Thus, the negligence of officials of the Insurance Company 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 their pocket.

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. 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 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. An incorrect statement is made as regards time taken for obtaining certified copy. The facts that the application itself was incomplete for 11 days and the certified copy though ready, was not collected for 4 days are suppressed. The delay is thus not properly calculated. Resultantly, even if delay as prayed is condoned, the Appeal cannot be registered. There is, thus, no end to negligence.

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

24. 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.

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

26. The copy of order be served upon the Chairman-Cum-Managing Director of the New India Assurance Company Limited, 87, M. G. Road, Fort, 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.)

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