



30.caf 783.2024 in fast.20122.2023.odt

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

CIVIL APPLICATION (CAF) NO. 783 OF 2024

IN

FIRST APPEAL (ST) NO. 20122 OF 2023

(Branch Manager, United India Insurance Co. Ltd., Mul Road, Chandrapur through its Regional Manager,
Nagpur V/s Nisha wd/o Maniram Gurnule and 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 Applicant/
Appellant.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 10, 2024.

Heard.

2. The Applicant – United India Insurance Company Ltd. has filed the present Application under Section 5 of the Limitation Act, 1963 seeking to condone delay of 176 days in filing Appeal against the Judgment and Award dated 07/12/2022 passed by the Motor Accident Claims Tribunal, Chandrapur in M.A.C.P. No. 180/2018.

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

“2. The appellant submits that the learned Member of Tribunal passed award 07.12.2022. Dealing counsel applied for certified copy on 21.12.2022. Certified copy was delivered on 01.02.2023, and thereafter he apprised the concerned D.O. regarding passing of aforesaid award in second week of February 2023.

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 April 2023 and then the appellant office (Regional Office) who 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, Chandrapur District Chandrapur, in M.A.C.P No.180/2018 and lastly in last week August 2023, competent authority approved the file for filing appeal before this Hon'ble Court, and then first week September, 2023 case papers' file sent to Advocate and finally after getting approval for court fee and statutory deposit amount, and then getting Court fee paid challan from the Bank, the appeal came to be filed after completion of all necessary formalities and therefore substantial time got to be consumed."*

4. Thus, the Applicant states that the Award was passed on 7/12/2022 and the dealing Counsel applied for certified copy on 21/12/2022. The Applicant further states that the certified copy of Award was delivered on 1/2/2023.

5. I have gone through the certified copy of Award. The remark of the Record Keeper of the Tribunal indicates that certified copy was applied for on 21/12/2022. The application, however, was completed in all respect on 13/1/2023. Thus, for twenty three days the application itself was not completed, and therefore, there arises no question of processing the application. The Applicant has assigned no

reason for aforesaid inaction. The Applicant, therefore, is responsible for delay of these twenty three days. Further, the Applicant was given a date to collect the certified copy on 21/1/2023 and the copy was ready for delivery on that date, but the copy has been collected on 1/2/2023. The Applicant has assigned no reason as to why was certified copy not collected on 21/1/2023. Therefore, the Applicant is further responsible for its inaction of 11 days i.e. from 21/1/2023 till 1/2/2023.

6. Put together, the Applicant has remained inactive for 34 days in completing the application and in collecting the certified copy. This inaction of 34 days has been suppressed by the Applicant and a picture is projected as if it had applied for certified copy on 21/12/2022 and copy was delivered on 1/2/2023. 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 34 days in the prayer seeking condonation of delay. In absence thereof, the delay of these 34 days cannot be condoned.

8. Further the Applicant states that certified copy was delivered on 30/1/2023 and thereafter in second week of February, 2023 the concerned Divisional office came to know about passing of said Award. Why did it take two weeks for the same is not explained. After getting information about passing of Award, the Divisional Office sought legal opinion from its Advocate who gave legal opinion in first week of March, 2023. What efforts were made to get legal opinion expeditiously is not mentioned. The Advocate advised to file Appeal and in first week of April case papers were forwarded to Regional Office at Nagpur. Why did it take four weeks for said action is not explained. Thereafter the Regional Office has sought legal opinion from its Advocate who also took 20 days and then in second week of April, 2023 the Regional Office referred the case to the competent authority who suggested for filing Appeal against the Award. Thus, unjustified time is taken in seeking legal opinion at different levels. Thereafter in first week of May, 2023 the competent authority approved the file for filing Appeal and in last week of May, 2023 the case papers were forwarded to the Advocate for preparing the Appeal. This span of three weeks to forward case papers is also not

justified. Thereafter the Counsel has prepared the Appeal and deposited cheque towards the mandatory deposit and procured the court-fees. Ultimately, the Appeal is filed on 21/6/2023.

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. The Counsel has relied upon the Judgment in the case of ***Sheo Raj Singh (Deceased) Through Legal Representatives and Others V/s Union of India And Another, (2023) 10 Supreme Court Cases 531***, wherein the Supreme Court considered various rulings on the point of condonation of delay and held in paragraph No. 41 as under :

“41. Having bestowed serious consideration to the rival contentions, we feel that the High Court’s decision to condone the delay on account of the first respondent’s inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal

and justice-oriented approach by the courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.”

12. The learned Counsel for the Applicant submits that in view of above, the delay may be condoned.

13. The request cannot be accepted unless sufficient cause is shown by the applicants. The Supreme Court, in the aforesaid judgment, has also referred to two other cases, in the following terms :

“39. According to Mr. Sharma, University of Delhi (supra) is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding University of Delhi (supra), was seized of a situation where even if the delay were to be condoned, it would cause grave prejudice to the respondent Delhi Metro Rail Corporation at the instance of the casual approach of the appellant University. This Court, on the argument of non-availability of the Vice-Chancellor for granting approval to file the appeal, and other reasons put forth in the matter, could not conclude that there was fulfilment of sufficient cause for condonation of delay; hence, the refusal to condone the delay. The decision really turns on the facts before this Court because of the prejudice factor involved.

40. We can also profitably refer to *Koting Lamkang (supra)*, cited by Mr. Sen, where the same Bench of three Hon'ble Judges of this Court which decided *University of Delhi (supra)* was of the view that the impersonal nature of the State's functioning should be given due regard, while ensuring that individual defaults are not nit-picked at the cost of collective interest. The relevant paragraphs read as follows:

“7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected.”

14. Thus, at the end of the day, the delay will have to be condoned only upon showing sufficient cause. At the same time, the institutional interest of the State will have to be considered but then the default of individuals cannot be ignored as well. For accepting plea of liberal approach, the officials must show that despite sincere efforts, the file could

not be processed within stipulated time. The sincere efforts are missing here.

15. In the present case, the decree-holders are victims of the accident. They are waiting for the compensation. The Officers of the Insurance Company ought to have been sensitive in handling the file. The Applicant is a Public Sector Insurer and must be governed by the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

16. 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 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 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.”

17. 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.

18. 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. Such conduct is contrary to the spirit of provisions of the Limitation Act and, therefore, consequences of its breach will follow.

19. 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.

20. 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.”

21. 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.

22. 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.....”

23. 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.

24. Another reason quoted by the Applicant – Company 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.

25. 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)

26. 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.

27. The learned Counsel for Applicant has then relied upon the Judgment of Co-ordinate Bench of this Court in the case of ***Shriram General Insurance Company Ltd. V/s Jyoti Vithoba Nahire and another, 2024 ACJ 65*** to contend

that unless notice is issued to the Non-applicants, the Application seeking condonation of delay may not be decided.

28. I have gone through the Judgment and to utter surprise did not find a word in this context. The issue before the Court was whether Application for interim stay of execution of the impugned Judgment passed under Motor Vehicles Act in a proposed Appeal can be considered, even if the Application for condonation of delay is pending. The Court answered the issue in the affirmative.

29. This finding has nothing to do with issuance of notice to the Non-applicants before deciding the Application. In fact, unless the case for issuance of notice is made out, the Non-applicants, particularly, in the case where the Non-applicants are victims of accident, should not be called to appear before the Court. Non-applicants in such cases are usually residents of the rural areas and will be required to attend the High Court which is at far distance and further incur expenses on travelling as also is time consuming. Thus, unless the Insurance Company makes out a case for issuance of notice, the Non-applicants need not be troubled by calling them to enter their appearance before the Court. Thus, there is no merit in the aforesaid contentions.

30. The Tribunal has held the owner and Insurance Company of offending vehicle jointly and severally liable to pay compensation along with interest at the rate of 7% per annum. Thus, the amount of compensation will carry

interest at the rate of 7% 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.

31. 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.

32. 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.”

33. 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.

34. 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 23 days and the certified copy though ready, was not collected for 11 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.

35. This conduct of the officials, if scrutinized on the touch stone of the provisions of the Act of 2005 and the judgments referred above, 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.

36. 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.

37. 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.

38. 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.

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

40. The copy of order be served upon the Chairman-Cum-Managing Director of the United India Insurance Company Ltd., 24, Whites Road, Chennai - 600 014 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.)