



17.caf.789.2024 in fast.20108.2023.odt

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

CIVIL APPLICATION (CAF) NO. 789 OF 2024

IN

FIRST APPEAL (ST) NO. 20108 OF 2023

(United India Assurance Company Ltd. V/s Smt. Sunanda Dhiraj @ Dhaniram Damaye @ Damahe & 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 24, 2024.

Heard.

2. The Applicant has filed the present Application under Section 5 of the Limitation Act, 1963 seeking to condone the delay of 260 days in filing Appeal against the Judgment and Award dated 7/11/2022 passed by the Motor Accident Claims Tribunal, Nagpur in MACP No. 356/2015

3. The Applicant has assigned following reasons in support.

“2. The appellant submits that the learned Member of Tribunal passed Award on 17/9/2022. Dealing counsel applied for certified copy on 19/9/2022. Certified copy was delivered on 20/10/2022 and thereafter he apprised the concerned D.O. regarding passing of aforesaid award in first week of November-2022.

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) 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, Nagpur District Nagpur, in MACP No. 356/2015 and lastly in first week of February, competent authority approved the file for filing appeal before this Hon'ble Court, and then in second week of April, 2023 case papers/file sent to Advocate. Meanwhile after drafting appeal summer vacation came and then in the month of June, 2023, the concerned officer was on leave 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 17/9/2022 and the dealing Counsel applied for certified copy on 19/9/2022. The Applicant further states that the certified copy of Award was delivered on 20/10/2022.

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 19/9/2022. The application, however, was completed in all respect on 4/10/2022. Thus, the Applicant took 15 days to complete the application and therefore there arises no question of processing the application. The Applicant, therefore, is responsible for delay of these 15 days.

Further, the Applicant was given a date to collect the certified copy on 20/10/2022 and the copy was also ready for delivery on that date, but the copy has been collected on 1/11/2022. The Applicant has assigned no reason why was certified copy not collected on 20/10/2022. Therefore, the Applicant is further responsible for its inaction of 11 days i.e. from 20/10/2022 till 1/11/2022.

6. Put altogether, the Applicant has remained inactive for 26 days in completing the application and in collecting the certified copy. This inaction of 26 days has been suppressed by the Applicant and a picture is projected as if the Applicant had applied for certified copy on 19/9/2022 and copy was delivered on 20/10/2022. 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. In any case, this inaction having been not explained, the Applicant

ought to add these 26 days in the prayer seeking condonation of delay. In absence thereof, the delay of these 26 days cannot be condoned.

8. The Applicant further states that after getting certified copy on 20/10/2022 he apprised the concerned Divisional Office regarding passing of the Award in the first week of November, 2022. Thus, the Applicant took about two weeks to apprise the concerned Divisional Office. Why did he take two weeks is not explained.

9. The Applicant then states that after getting information of passing of Award the Divisional Office 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) who also sought legal opinion for filing Appeal and then referred the case to the competent authority who suggested for filing Appeal. The Applicant has not explained as to when was legal opinion sought. The Applicant states that case papers were sent to Appellant office in January-2023. What prevented the Applicant to forward the case papers diligently, is completely absent. The Applicant has further not explained as to why was second opinion sought to file Appeal and when was second opinion given and when was case referred to competent authority.

10. The Applicant then states that thereafter the case file was sent for approval and then finally concerned Officer approved the case file for preferring the Appeal. Again the date when was

file sent for approval is absent, when was approval is given is absent. Who is the approval granting Officer is not disclosed.

11. The Applicant then states that in second week of 2023 case papers were sent to Advocate and since there were summer vacations and since the concerned Officer was on leave in the month of June-2023, the Appeal has been filed on 4/10/2023. The reason so assigned by the Applicant indicates that in summer vacations the Appeal could not have been filed, which apparently is an incorrect stand. The reason that in the month of June-2023 the concerned Officer was on leave is also not acceptable. The Applicant ought to have explained as to who was incharge of the said post and why did not he process the Application. It appears that thereafter the Applicant took about three months for getting approval for court-fees and statutory deposit and thereafter filed Appeal.

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

13. 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.

14. The Supreme Court in the case of *Pathapati Subba*

Reddy (Died) by LRs and Ors. Vs. The Special Deputy Collector (LA) [MANU/SC/0285/2024], has, on the law of limitation, observed in paragraph 16 as under :

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. v. Katiji and Ors. MANU/SC/0460/ 1987 : 1987:INSC:54 : (1987) 2 SCC 107 : AIR 1987 SC 1353, this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day’s delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.”

15. Thus, the Supreme Court has, in clear terms, held that existence of sufficient cause for not filing the appeal in time is a condition precedent for exercising discretionary power to condone the delay. The Court further clarified that the phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the

advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

16. The Counsel has, however, 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.”

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

18. The Supreme Court, while upholding the judgment

passed by the High Court, has held that exercise of discretion done by the High Court, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The use of words 'at times' is a clear indication that deviation to the rules of limitation is otherwise not permissible. The Supreme Court has referred to couple of cases in following terms :

“39. According to Mr Sharma, University of Delhi Vs. Union of India [(2020) 13 SCC 745] is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding University of Delhi, 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 State of Manipur Vs. Koting Lamkang [(2019) 10 SCC 408], cited by Mr. Sen, where the same Bench of three Hon'ble Judges of this Court which decided University of Delhi 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."

19. The Supreme Court, while highlighting the aspect of protecting the interest of institution, has also observed that the law of limitation will have to be implemented, though would harshly affect the party. 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.

20. The default 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 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.”

21. 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.

22. 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 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.

23. Another reason quoted by the Applicant – Company is, time taken for procurement 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.

24. 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)

25. 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.

26. 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.

27. 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.

28. 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 upon 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.

29. The Tribunal has held the Applicant – Company being Insurer and Respondent No.4 being owner of the offending vehicle, 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 of 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 their pocket.

30. 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.

31. 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.”

32. 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.

33. To expect from the Court a liberal approach, the officers, like the applicants, are/were duty bound to show that despite due diligence and *bona fide* efforts, the appeal could not be filed within stipulated time because of certain administrative exigencies, which were beyond their control. The Government Officials are under a special obligation to ensure that they perform their duties with due diligence and commitment. 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 inaction of 26 days is suppressed. The delay is not properly calculated. Resultantly, even if delay as prayed (which does not include 26 days) is condoned, the Appeal cannot be registered and processed for adjudication. There is, thus, no end to negligence.

34. This conduct of the officials, if scrutinized on the touch stone of the Judgments referred to above coupled with 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.

35. 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.

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

37. 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.

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

39. The copy of order be served upon the Executive Director/Chairman-Cum-Managing Director of the United India Insurance Company Ltd., 24, Whites Road, Chennai, Tamil Nadu - 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 30/6/2024. Reporting compliance of the instant order will be appreciated.

(ANIL L. PANSARE, J.)

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