

2024:PHHC:164915



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-3705-2019 (O&M)
Date of Decision: December 10, 2024

Deen Mohd. @ Deenu

...Appellant

VERSUS

Pramod Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Digvijay Singh, Advocate for
Mr.Ashish Gupta, Advocate
for the appellant.

Mr.Vikas Chatrath, Advocate
for respondent No.3.

ARCHANA PURI, J.

Along with FAO-3705-2019 to seek enhancement of the compensation, the appellant has also filed an application i.e. CM-12999-CII-2019, for seeking condonation of delay of 3998 days in filing the appeal.

In the application, it is submitted that the appellant was under the impression that the appeal is pending before this Court, as the impugned Award and other relevant documents have been handed over to Sh.Vipul Aggarwal, Advocate. However, when the appellant tried to contact the advocate with respect to the fate of his case, but he failed to contact him. Thereafter, he contacted the present advocate, in order to know about the status of his case. On enquiry, the appellant came to know that earlier, no



appeal was filed against the impugned Award and thereupon, the appellant decided to file the appeal before this Court, with condonation application. Further, it is stated in the application that the appellant met the present advocate on 17.10.2018 and only on this account, the delay had taken place. As such, a prayer was made for condonation of delay of 3998 days in filing the appeal.

Notice was only issued to the insurance company, which made appearance through counsel and filed reply.

In the reply, it is averred that there is inordinate delay of 3998 days in filing the appeal. No cogent reason has been assigned, much less a satisfactory reason, explaining such a long delay, which is nearly of 11 years. The sole ground taken is with regard to the impression built by the appellant about the appeal to be pending, as the documents were handed over to Sh.Vipul Aggarwal, Advocate. Eventually, the appellant found that there was no appeal filed against the impugned Award.

Further, it is averred in the reply that the reason assigned does not explain long delay of 11 years. The appellant was required to be vigilant of filing of his appeal. Now, such a ground for condonation of delay, cannot be taken. Therefore, the appellant cannot take advantage of his own act and conduct.

In this regard, reliance has been placed upon ***State of Haryana vs. Rameshwar Kaushil, 2023(4) RCR (Civil) 517***. As such, a prayer was made for dismissal of the application for condonation of delay.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the



FAO-3705-2019

-3-

appellant that the delay in filing the appeal, is solely on account of reason as assigned in the application, as the Advocate, to whom the papers were handed over, neither filed the appeal nor apprised the appellant about non-filing of the appeal. It is submitted that delay in filing the appeal is not intentional, much less actuated by malice. In fact, the appeal has been filed for seeking enhancement of the compensation. Also, learned counsel for the appellant submitted that several times, the Courts held that liberal and pragmatic approach is required to be adopted for condoning the delay, particularly, in the circumstances, where the claim is for grant of compensation and examined in the light of legislative intent that the Tribunal has an obligation to assess just and reasonable compensation. Furthermore, it is also submitted that the appellant was an injured person and therefore, there was delay on his part.

On the contrary, learned counsel for the insurance company has refuted the claim of the appellant. He submits that from the facts and circumstances of the case, as spelt out from the application, no sufficient cause is made out for condonation of delay. In fact, it is submitted that it is a long delay of 11 years and therefore, substantive right accrues in favour of the insurance company, which as such, cannot be lightly disturbed, while considering only the ground of FAO having filed only for seeking enhancement of compensation, on account of injuries sustained. Thus, it is submitted that delay, as such, cannot be condoned on sympathetic grounds.

In view of the aforesaid submissions, reference is made to the decision rendered by the Hon'ble Supreme Court in ***Pathapati Subba Reddy (Died) by LRs & Ors. vs. The Special Deputy Collector (LA), 2024(3) RCR***



(Civil) 135, wherein, while considering the question of condonation of delay in filing the appeal and dismissal of the same being barred by limitation, it was observed as herein given:-

7. The law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium” i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

10. Section 3(1) of the Limitation Act, for the sake of convenience, is reproduced hereinbelow:

“3. Bar of limitation. - (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

11. Though Section 3 of the Act mentions about suit, appeal and application but since in this case we are concerned with appeal, we would hereinafter be mentioning about the appeal only in context with the limitation, it being barred by time, if at all, and if the delay in its filing is liable to be condoned.

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision



connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

*14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In **Bhag Mal alias Ram Bux and Ors. vs. Munshi (Dead) by LRs. and Ors. (2007) 11 SCC 285**, it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.*

15. It is in the light of the public policy upon which law of limitation is based, the object behind the law of limitation and the mandatory and the directory nature of Section 3 and Section 5 of the Limitation Act that we have to examine and strike a balance between Section 3 and Section 5 of the Limitation Act in the matters of condoning the delay.”



Further, while 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, reference was also made to various case law and further, on the basis thereof, it was concluded as herein given:-

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."



In this backdrop, now advertng to the case in hand, it is pertinent to mention that the assertions in the application for seeking condonation of delay are quite vague. It simply states about the appellant being under the impression that his appeal is pending before this Court and that impugned Award and relevant documents have been handed over to Sh.Vipul Aggarwal, Advocate. Furthermore, it is stated that when he tried to contact the counsel, he could not do so and then he contacted the present counsel to know about the status of the appeal. It only states about the appellant having met the present counsel on 17.10.2018. For the intervening period, as to when the documents were handed over to Sh.Vipul Aggarwal, Advocate and when the appellant tried to contact him, regarding the same, no detail, as such, has been given. Only vague assertion has been made.

Perusal of the impugned Award reveals that it was passed on 14.08.2007 and the appeal in question has been filed in the year 2019. As such, it is evident that no sufficient cause, as such, stands established. No doubt, the legislative intent of the Motor Vehicles Act, ought to be taken into consideration, but however, at the same time, as observed by the Hon'ble Supreme Court, in the aforesaid case law, the merits, as such, are not to be taken into consideration. Various circumstances have to be considered. As observed aforesaid, the Award was passed in the year 2007 and appeal has been filed in the year 2019. However, the litigation, which has been adjudicated upon, as such, cannot be re-opened, after any number of years. 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



FAO-3705-2019

-8-

dead matters, to be revived and re-opened, while taking aid of Section 5 of the Limitation Act.

Considering the same, as such, no case is made out to condone the delay of 3998 days in filing the appeal. Hence, the application i.e. CM-12999-CII-2019 for condonation of delay is dismissed and consequently, FAO-3705-2019 being time barred, is also hereby dismissed.

The pending civil misc. applications, if any, also stand disposed of.

December 10, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No