



2024:DHC:6075



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 24th July, 2024.**

+ **MAC.APP. 174/2020**

SRI RAM PACKERS

.....Appellant

Through: **Mr. Konark Tyagi, Advocate**

versus

GANGA RAM & ORS.

.....Respondents

Through: **Mr. Pankaj Gupta, Proxy counsel for
Ms. Suman Bagga, Advocate for R-3**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 19735/2020 (Delay)

1. This is an application under Section 5 of Limitation Act, 1963 ("Act" hereinafter) read with Section 151 of the Code of Civil Procedure, 1908 ("Code" hereinafter) seeking condonation of delay of 427 days in filing the accompanying appeal.

2. Learned counsel appearing on behalf of the applicant/appellant submitted that the appellant has filed the accompanying appeal seeking setting aside of the impugned order dated 20th October, 2018 and the recovery certificate dated 12th February, 2020, however, there is a delay of 427 days in filing the same.

3. It is submitted that the applicant herein could not file the



2024:DHC:6075



accompanying appeal within the limitation period as he was not aware about the order dated 20th October, 2018 by virtue of which the learned Tribunal has ascertained its liability under the principle of ‘pay and recover’.

4. It is submitted that the applicant came to the knowledge of the afore said order only when the Court Commissioner approached the appellant on 20th February, 2020 along with a recovery certificate dated 12th February, 2020.

5. It is submitted that till 20th February, 2020, the applicant had no knowledge of the aforementioned order since he was assured by his counsel that the vehicle in question was validly insured and the liability of the insurance company was determined.

6. It is further submitted that the delay on part of the applicant is unintentional and *bona fide*, and gross injustice will be caused to the applicant in case the delay is not condoned.

7. Therefore, in view of the foregoing submissions, it is submitted that the delay may be condoned and the appeal be heard on merits.

8. *Per Contra*, learned counsel appearing on behalf of the respondent no. 3 vehemently opposed the arguments advanced by the learned counsel appearing on behalf of the applicant/appellant, submitting to the effect that the inordinate delay of 427 days should not be condoned.

9. It is submitted that the ground for condonation of delay taken by the applicant/appellant that he was uninformed about the status of his case is an insufficient ground for condonation of delay. Therefore, the instant application, being devoid of any merit, may be dismissed.



10. Heard the learned counsel for the parties and perused the contents of the application.

11. Insofar as the law is concerned, Section 5 of the Act provides for extension of prescribed period for filing an application under any provision except Order XXI of the Code thereby giving powers to the Court to condone the delay after the prescribed period of limitation. The provision is reproduced herein:

“Section 5. Extension of prescribed period in certain cases.

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.-- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

12. Upon careful examination of the aforesaid provision, it becomes apparent that the phrase ‘sufficient cause’ constitutes an essential condition for the extension of the prescribed period under the Act. Consequently, it is incumbent upon the appellant/applicant to demonstrate to the satisfaction of the Court that there existed ‘sufficient cause’ for the delay in not filing the petition/application within the prescribed time.

13. It is a well-settled principle that the determination of what constitutes ‘sufficient cause’ cannot be governed by any inflexible rule but must be adjudicated by the Courts based on the peculiar facts and circumstances



2024:DHC:6075



surrounding each individual case.

14. In light of the facts of the instant case, the applicant/appellant has submitted that the only reason as to why it could not file the accompanying appeal within the prescribed limitation period is that it was not aware about the claim petition having been decided wherein the learned Tribunal had directed the insurance company to recover the compensation amount from the applicant/appellant herein.

15. It has been contended on behalf of the applicant/appellant that his counsel before the learned Tribunal had assured that the vehicle that caused the accident was validly insured and the liability of the insurance company has been fixed. The applicant contends that the said reasons are genuine and *bona fide* due to which the appeal could not be filed within statutory time limit.

16. The applicant herein contends that due to the fault of the counsel to inform the appellant about the case, the appeal could not be filed within the prescribed time. With regard to the same the Division Bench of Madras High Court in ***M. Subramania Mudaliar v. K. Janardhanam*, 1993 SCC OnLine Mad 204** observed that such contention is not a valid ground to seek condonation of delay. The relevant portion of the same is as under:

“8. It is but natural to infer that the appellant and the senior clerk would have been meeting very often. Particularly when the application for appointment of receiver was filed by the respondents, the appellant would have met not only the senior clerk but also the counsel. There is no explanation as to why even at that time the papers were not represented. It is stated in the affidavit that the counsel decided to reconstruct the papers



and apply to the Court for necessary permission in 1993. If the version that papers could not be traced even after an extensive search is true, the decision to reconstruct the papers would have been taken in 1988, or at least in 1990. The inaction for over three years on the part of the appellant remains unexplained.

9. In the circumstances, there is no valid explanation for the inordinate delay in representation. Even if the facts stated in the affidavit are true, they prove gross negligence and callous indifference on the part of the appellant and his counsel. Even assuming that there is negligence only on the part of the counsel, it is not a valid ground for condoning such a long delay of six years in representation of the appeal. Hence, this petition for condonation of delay is dismissed.”

17. Further, in the case of **Rafiq v. Munshilal, 1981 SC 1400**, the Hon’ble Supreme Court has dealt with the matter of a villager, who had entrusted the records of his case to his counsel and thereafter did not pursue the matter with him. The Hon’ble Supreme Court was of the view that after engaging the lawyer, the party would be confident that the lawyer would look after his interest and the personal appearance of the party is not required nor it is of any use. The appellant in that matter was under the hope that the lawyer would conduct the matter to the best of his ability and do his job. However, in the instant case, the appellant cannot be compared with an illiterate villager.

18. Also, in **G. Ramegowda v. Spl. Land Acquisition Officer, (1988) 2 SCC 142**, the Hon’ble Supreme Court held that delays in preferring appeals are required to be condoned in the interest of justice where no gross



2024:DHC:6075



negligence or deliberate inaction or lack of *bona fide* is imputable to the party seeking condonation of the delay. The relevant portion of the same is as under:

“14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd. [AIR 1962 SC 361 : (1962) 2 SCR 762] ; Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] ; Concord of India Insurance Co. Ltd. v. Nirmala Devi [(1979) 4 SCC 365 : AIR 1979 SC 1666 : (1979) 3 SCR 694] ; Lala Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953 : (1970) 2 SCR 90] ; Collector, Land Acquisition v. Katiji [(1987) 2 SCC 107] etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression “sufficient cause” in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In Katiji case [(1987) 2 SCC 107] this Court said: (SCC p. 108, para 3)

“When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. . . .



2024:DHC:6075



It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”..”

19. Applying the aforesaid discussion of law to the facts instant case, this Court is not satisfied that the applicant/appellant has diligently pursued the claim before the learned Tribunal. The applicant/appellant has not placed any material on record to show that at any point of time it had enquired from its counsel with regard to the progress of the matter.

20. Furthermore, the order sheets attached to the Lower Court's Record shows that despite service, the appellant failed to appear before the learned Tribunal. Moreover, the appellant also failed to appear even after the service was effectuated on its fresh address. Accordingly, in the order dated 31st January, 2017, the learned Tribunal decide to proceed with the matter *ex-parte*. Therefore, the appellant cannot be permitted to shift the entire blame on his advocate at this stage.

21. This Court is of the considered view that no knowledge of the impugned order is not a sufficient and valid ground of delay as it was the duty of the applicant/appellant to be aware and informed of the status of the case in which he is a party. It is settled that the litigant is equally responsible to pursue the matter in the Court. Therefore, the arguments advanced by the applicant are legally untenable on the face of it and cannot be accepted as the same are baseless and without any merit.

22. In light of the above facts and circumstances and discussion on law,



2024:DHC:6075



this Court does not find any merit in the instant application as the applicant/appellant has failed to satisfy that there exists sufficient cause for delay in filing the appeal, a condition necessary for condonation of delay under Section 5 of the Act.

23. In view of the foregoing observations, this Court does not find cogent reasons to condone the inordinate delay of 427 days in filing the appeal.

24. Accordingly, the instant application, being devoid of any merit, stands dismissed.

MAC.APP. 174/2020 & CM APPL. 19738/2020 (Stay)

25. In view of the order of the even date passed in CM APPL. 19735/2020, the instant appeal stands dismissed along with the pending applications, if any.

26. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 24, 2024

dy/aa/ryp

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 20.08.2024
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MAC.APP. 174/2020

Page 8 of 8