



2024:DHC:5798



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of order: 24th July, 2024.

+ MAC.APP. 601/2019

SANJEEV MALIK

.....Appellant

Through: Mr.Somnath Parashar, Advocate

versus

M/S RELIANCE GENERAL INSURANCE CO LTD & ORS

.....Respondents

Through: Mr.Pankaj Gupta, Proxy counsel for
Ms.Suman Bagga, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 25479/2019 (Delay)

1. This is an application filed on behalf of the applicant/appellant under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 799 days in filing the instant appeal challenging the *ex-parte* award dated 15th November, 2016 the learned Presiding Officer, MACT-01 (SE)/Saket Courts, New Delhi in suit bearing no. 3024/2016.

2. Learned counsel appearing on behalf of the applicant submitted that the applicant could not file the present appeal within the period of limitation due to the reason that the appellant/owner of the alleged offending vehicle was never served before the learned Tribunal.

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3. It is submitted that the learned Tribunal wrongly noted in paragraph No.4 of the impugned judgment that the applicant failed to contest the claim petition and proceeded *ex-parte*.

4. It is further submitted that the notice dated 21st September, 2015, which is appended as Annexure-B to the present appeal, shows that the learned Tribunal had directed to serve the said notice upon the owner through the Investigating Officer, however, the same was never served by the Investigating Officer because it does not bear the signature of the owner as received. Further, the Investigation Officer has not filed any report in respect of the service of notice upon the owner. Moreover, *pabandinama* was also served upon the owner which has to be served by the Investigating Officer at the time of filing the Detailed Accident Report.

5. It is submitted that the applicant came to know about the impugned judgment and execution proceedings filed by the respondent No.1/insurance company on 12th April, 2019, when he received a notice of the learned Assistant Collector, Raja Garden, New Delhi regarding the recovery of Rs.4,60,183/- which was handed over to the applicant by the new buyer of the applicant's previous residence, i.e., C-8, Saraswati Garden, New Delhi, which the applicant had sold in the year 2016.

6. It is submitted that after receiving the notice on 12th April, 2019, the applicant contacted his counsel and the said counsel moved an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter "CPC") seeking setting aside the award dated 15th November, 2016, however, the same was dismissed by the learned Tribunal on 20th April,



2019, pursuant to which the applicant instructed his counsel to file the present appeal.

7. It is submitted that the aforestated reasons are *bonafide* and in the event the delay of 799 days is not condoned, the same would cause serious prejudice to the applicant. Therefore, in view of the foregoing submissions, it is prayed that the delay may be condoned and the matter be heard on merits.

8. *Per Contra*, the learned counsel appearing on behalf of the non-applicants/respondents vehemently opposed the present application and submitted that the grounds taken by the applicant are unreasonable and that the same is misuse of the process of law, and in the absence of any *bonafide* reasons, the application is liable to be dismissed being devoid of any merit.

9. Heard the learned counsel appearing on behalf of the parties and perused the material placed on record.

10. It has already been discussed and reiterated time and again by the Hon'ble Supreme Court as well as this Court that filing of a particular appeal or application within the limitation is the prescribed rule and any deviation from such prescribed rule is against the nature of settled legal propositions. As per the settled law, while condoning the delay, more specifically, enormous delay; the Courts have to consider the genuineness of the reasons furnished by the party seeking condonation of delay. Huge delay is to be condoned only if the reasons are genuine and acceptable, and if it is made out that there is 'sufficient cause'. Thus, the condonation of delay cannot be a routine affair since the person, who is not vigilant, is not entitled for the



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relief after a prolonged period.

11. Moreover, in *Pathapati Subba Reddy v. LAO*, 2024 SCC OnLine SC 513, the Hon'ble Supreme Court categorically observed that the power to condone the delay has to be dealt with in a peculiar manner by taking into consideration the rights that gets created in favour of the other party on account of the other party not taking the legal recourse within the stipulated time period. The Hon'ble Court also noted that upon expiry of the limitation period to file an appeal, the decree-holder gets vested with a substantive right which must not be disturbed and that the decree holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

12. The petitioner has filed the instant application seeking condonation of delay of 799 days on the ground that *firstly*, he did not receive the notice of the claim filed before the learned Trial Court and that he only got to know about the claim having been adjudicated when he received a notice from the Assistant Collector, Raja Garden, New Delhi regarding the recovery of Rs.4,60,183/-. It has been contended that pursuant to the receipt of the notice, he immediately moved an application before the learned Tribunal to set aside the *ex-parte* award dated 15th November, 2016, however, the same was dismissed.

13. This Court has perused the Trial Court's Record and upon perusal of the same, it is observed by this Court that vide order dated 22nd August, 2015, a court notice was issued to the appellant/owner of the offending vehicle through the investigating officer as the owner had failed to appear on



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the previous date of hearing, i.e., on 22nd August, 2015.

14. Therefore, vide the order dated 22nd August, 2015, the owner/appellant was asked to appear before the learned Tribunal on 21st September, 2015. The said court notice and the report of the server are available on the record and the same implies that it was served upon the owner, however, on 21st September, 2015, the learned Tribunal noted that the owner of the offending vehicle has failed to appear despite the court notice and accordingly, vide order dated 21st September, 2015, the matter was proceeded *ex-parte*.

15. Further, at page no. 211 of the Trial Court's Record, another notice dated 13th October, 2016 was issued by the counsel for the insurance company under Order XII Rule 8 of the CPC. The said notice was issued to the owner/appellant stating therein that the claim petition is listed for 24th October, 2016 and the owner is required to appear before the learned Tribunal along with the original insurance policy and valid driving license of the driver of the offending vehicle. However, it is noted that the appellant still did not appear before the learned Tribunal as no appearance has been recorded on behalf of the owner and the driver of the offending vehicle in any of the orders of the further dates.

16. It is noted by this Court that only after the appellant received the notice of the learned Assistant Collector, Raja Garden, New Delhi regarding recovery of Rs. 4,60,183/- from the previous buyer of his residence, that the appellant filed an application under Order IX Rule 13 of the CPC, thereby, seeking setting aside of the *ex-parte* award dated 15th November, 2016. The



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said application was dismissed by the learned Tribunal vide order dated 20th April, 2019 observing that the appellant herein himself failed to contest the claim petition despite the service of the court notice and hence, no grounds were found to set aside the *ex-parte* award. Relevant paragraphs of the said order are as under:

“..Counsel for Respondent No.2 submits that DAR was filed on 22.8.2015 and on that day only driver was appeared and owner was not present as he was not aware about the proceeding of the case as he was shifted to other address. On the next date of hearing i.e. on 21.9.2015 Driver & Owner not present and Court Notice were issued to them through IO but despite service on them, they did not appear and proceeded ex-parte. It is further stated that during course of proceedings as per directions of Ld. Predecessor, one driving license of driver/R1 was filed by the IO along with verification report, which shows that driver/R1 was authorized to drive only “LMV vehicles” and he was not authorized to drive “Heavy Vehicles”, which is the offending vehicle in this case. Applicant/Respondent No.2 only came to know about the proceedings on 12.4.2019 when he received notice of Asstt. Collector, which was handed over to him by the new buyer of applicant's previous residence i.e. C-8, Saraswati Garden, New Delhi, which the applicant has left in the year 2016.

Record shows that Court Notice was issued to the owner through IO and notice was duly served, despite service, he did not appear and proceeded ex-parte on 21.9.2015. In para no. 18 of the award, Ld. Predecessor of this court observed that IO during his investigation seized the DL of R1 from District Transport Officer Darbhanga, Bihar. As per said verification report, said licence was valid in regard to LMV (Transport). The offending vehicle was a heavy goods vehicle having unladen weight of 10,200 kg. and gross weight of 40,200 kg.



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Hence, it is proved that R1 driver was not authorized to drive the offending vehicle.

In these circumstances, recovery rights were given to the Insurance Company.

*This Tribunal observed that no cogent grounds are made out to set aside the ex-parte order. Hence the application is hereby **dismissed..***

17. Upon perusal of the grounds raised by the applicant/appellant, it is made out that the same are vague and non-cogent as the law states that the litigants are required to be diligent in order to assert and protect their legal rights, and failure to do the same cannot invite sympathy from the Court just because the litigant wakes up from slumber as soon as he is aware about the directions passed against him.

18. In the present case, the applicant has been unable to show any genuine reason by virtue of which he could not file the present appeal within the stipulated time period, and merely submitting that he was not aware about the order been passed against him is not a valid and legally tenable ground to condone the inordinate delay of 799 days. Observations made by this Court in the foregoing paragraphs shows that the appellant did not appear before the learned Tribunal to contest the claim petition despite sufficient opportunities having been granted, and the appellant only entered appearance when he filed an application under Order IX Rule 13 of the CPC, and that too in the year 2019, whereas the claim petition was filed in the year 2016. The same shows that the appellant has clearly failed to exercise due diligence on his part and did not appear before the learned Tribunal, despite



opportunities.

19. In view of the above, the appellant cannot be allowed, at this stage, to challenge the *ex-parte* award. Moreover, the appellant has also not challenged the order dated 24th April, 2019 vide which his application seeking setting aside of the *ex-parte* award was dismissed.

20. It is pertinent to mention here that the appellant has been unable to put forth any evidence to substantiate his arguments that he was not aware about the proceedings before the learned Tribunal when the evidence on record shows otherwise.

21. It must not be forgotten that the Motor Vehicles Act, 1988 is a legislation enacted with the intent to impart social welfare and for the benefit of the victim/injured, and approaching an appellate Court challenging an award of the Motor Accident Claims Tribunal after the beyond the limitation period completely defeats the purpose of the aforesaid enactment, ultimately causing prejudice to the victim. In view of the same, this Court is of the opinion that condonation of inordinate delay in filing an appeal under the Motor Vehicles Act, 1988 must be scrutinized meticulously and great precaution must be adhered thereto.

22. In light of the discussions on facts as well as on law, this Court does not find the grounds raised by the applicant/appellant to be cogent as the said grounds do not meet the test of '*sufficient cause*' laid down by the Hon'ble Supreme Court as well as this Court in a catena of judgments.

23. Therefore, this Court is not inclined to exercise its discretion under Section 5 of the Limitation Act, 1963 to condone the inordinate delay of 799



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days in filing the captioned appeal and thus, the present application seeking condonation of delay of 799 days in filing the captioned appeal is dismissed.

MAC.APP. 601/2019, CM APPL. 25477/2019 (additional documents) & CM APPL. 25478/2019 (Stay)

24. In view of the order of even date passed in CM APPL. 25479/2019, the instant appeal alongwith pending applications stand dismissed.

25. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 24, 2024

dy/ryp/av

Click here to check corrigendum, if any