

Court No. - 4

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 649 of 2019

Appellant :- Union Of India Throu.General Manager Northern Railway N.Delh

Respondent :- Mohd. Mansoor Alam And Another

Counsel for Appellant :- Sm Singh Royekwar, Arun Kumar Verma, Ashwani Kumar Singh

Counsel for Respondent :- Mahesh Kumar Mishra, Alok Kr. Misra

Hon'ble Rajnish Kumar, J.

(C.M. Application No.150057 of 2019)

1. Heard Shri Ashwani Kumar Singh, learned counsel for the appellant and Shri Israr Ahmad, Advocate holding brief of Shri Alok Kumar Mishra, learned counsel for the respondents.
2. This highly belated appeal, with a delay of 644 days as per the office report, has been filed alongwith application for condonation of delay.
3. Learned counsel for the appellant submits that after passing of the impugned judgment and award and receiving the order passed by the tribunal, which was delayed on account of illness of wife of counsel for the appellant before the tribunal, a decision was taken to file a review application on 28.06.2018. In pursuance thereof the review application was filed, which was dismissed on 30.08.2019. Thereafter, after necessary correspondence and approval from the competent authority, this appeal has been filed without further delay, therefore, the delay is not deliberate and intentional and liable to be condoned and the appeal may be heard and decreed on merit.
4. On the other hand, though no objection has been filed, however learned counsel for the respondents submits that the appeal has been filed without sufficient explanation for the delay. There is no explanation from the date of judgment and award dated 06.12.2017 up to 20.06.2018 except a vague explanation, which is nothing but an excuse as once a case has been pursued by the authorities, it can not be said that they were not having the knowledge of the order passed by the tribunal. Thus, the submission is that the application is misconceived and liable to be dismissed.

5. Having considered the submissions of learned counsel for the parties, I have perused the affidavit filed in support of the application for condonation of delay and material placed on record.

6. The impugned judgment and award was passed by tribunal on 06.12.2017. In paragraph-3 only it has been mentioned that the counsel for the appellant, who was appearing before the tribunal, was facing serious issues in his personal life, as his wife was seriously ill, therefore, he could not inform timely about passing of the order and his wife expired on 24.05.2018 and as soon as the order was informed by him on 20.06.2018 as disclosed in paragraph-4, the decision was taken on 28.06.2018 for filing an application for review. Thereafter the review was filed, which has been dismissed on 30.08.2019.

7. The aforesaid explanation given by the appellant indicates that only a vague plea has been taken in the affidavit about the illness of the wife of the counsel for the appellant before the tribunal without indicating the illness for such a long period. It has also not been indicated as to whether the said counsel had worked or not w.e.f. 06.12.2017 up to the date of communication of the order on 20.06.2018 and conducted any case of the appellant or not. From seal on the back of the impugned judgment and award dated 06.12.2017, it is apparent that the copy was applied on 11.12.2017 and it was received on 21.12.2017, therefore, it appears that only for filing of appeal a concocted story has been prepared. Even otherwise, it is not an explanation for delay but an excuse because once the appellant was party before the tribunal and he was pursuing the matter, he should have been vigilant to procure the copy from the counsel in time because the affidavit does not indicate that the appellant had no information about the impugned judgment and award. Therefore, it was in the knowledge of the appellants and they could have filed the appeal.

8. The explanation for delay also indicates that the date of filing of the review has not been given and only the date of dismissal of review application on 30.08.2019 has been disclosed. It appears that it has deliberately not been given because its number is Rev/A/03/2019, which indicates that it was filed in 2019, which would be much after the decision taken allegedly on 28.06.2018. Thereafter the explanation from the date of dismissal of the review up to the date of filing of the appeal has been given, which also indicates that the matter has been processed in a casual manner thereafter also.

9. In view of above, it is apparent that the appellant has failed to give sufficient explanation for such a long delay and the

explanation also does not seem bone fide and unintentional, rather a concocted story has been prepared without furnishing the complete and correct facts.

10. The Hon'ble Supreme Court, in the case of **Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563**, held that it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation. The relevant paragraphs- 28 and 29 are extracted here-in-below:-

"28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

11. The Hon'ble Supreme Court, in the case of **University of Delhi v. Union of India, (2020) 13 SCC 745**, has held that the consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. The relevant paragraph 23 is extracted here-in-below:-

"23. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the courts based on the fact situation. In Katiji [LAO v. Katiji, (1987) 2 SCC 107] the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight of is that the consideration therein was in the background of dismissal of the application seeking

condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800%."

12. The Hon'ble Supreme Court, in the case of **Lanka Vehkataswarlu Vs. State of Andhara Pradesh and Others; (2011) 4 SCC 363**, has held that the concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay.

13. A three judges bench of the Hon'ble Supreme Court, in the case of **Union of India Vs. Central Tibetan Schools Admin and Ors reported in (2021) SCC Online 119**, has held that we have repeatedly been counselling through our orders various Government Departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order but this appears to be falling on deaf ears despite costs having been imposed in a number of matters with the direction to recover it from the officers responsible for the delay. The relevant paragraphs-4 and 5 are extracted here-in-below:-

"4. We have heard the learned Additional Solicitor General for some time and must note that the only error which seems to have occurred in the impugned order [Union of India v. Central Tibetan Schools Admn., 2018 SCC OnLine Del 13371] is of noticing that it is not an illiterate litigant because the manner in which the Government is prosecuting its appeal reflects nothing better! The mighty Government of India is manned with a large Legal Department having numerous officers and advocates. The excuse given for the delay is, to say the least, preposterous.

5. We have repeatedly been counselling through our orders various Government Departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the Legal Department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in a number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake! "

14. The Hon'ble Supreme Court, in the case of **Sheo Raj Singh (deceased) through legal representatives and others Versus Union of India and another; (2023) 10 SCC 531**, has held that sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable and the courts must distinguish between an "explanation" and an "excuse". The relevant paragraphs- 30, 31 and 32 are extracted here-in-below:-

"30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However,

these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an "explanation" and an "excuse". An "explanation" is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an "explanation" from an "excuse". Although people tend to see "explanation" and "excuse" as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An "excuse" is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an "excuse" would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

15. The Hon'ble Supreme Court, in a recent judgment dated 29.11.2024 passed in **State of Madhya Pradesh Vs. Ram Kumar Choudhary; Special Leave Petition (C)-Diary No.48636 of 2024**, has held that the legal position is that where a case has been presented in the court beyond limitation, the petitioner has to explain as to what was the "sufficient cause", which means an adequate and enough reason which prevented him to approach the Court within limitation. Even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. The "sufficient cause" can not be liberally interpreted, if negligence, in action or lack of bona fides is attributed to the party. It has also been observed that the delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. It has further held that party seeking condonation has to explain why it was unable to institute the proceedings within the period of limitation. The relevant paragraphs-5, 5.1 and 7 are extracted here-in-below:-

"5. The legal position is that where a case has been presented in the Court beyond limitation, the petitioner 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 Majji Sannemma v. Reddy Sridevi⁴, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in Ajay Dabra v. Pyare Ram⁵ wherein, it was held as follows:

"13. This Court in the case of Basawaraj v. Special Land Acquisition Officer [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"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."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant." Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.1. In *Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heirs, wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:*

"24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

.....
7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: *Ajit Singh Thakur Singh and Another v. State of Gujarat*, AIR 1981 SC 733)."

16. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that the grounds shown for condonation of delay are not bona fide rather with a concocted story without furnishing the complete and correct facts, therefore, no sufficient cause has been shown for condonation of delay. Therefore, it can not be allowed.

17. At this stage, learned counsel for the appellant submits that the claim petition was filed arraying the N.C. Railway, Allahabad as respondent and the appellant Northern Railway was impleaded in the year 2013 by way of amendment. Thereafter the notice was served on the appellant and the appellant had put in appearance and filed the written statement but the affidavit filed prior to appearance of the appellant has been considered and the interest has also been awarded from the

date of the application i.e. prior to impleadment of the appellant, which could not have been done. The arguments advanced by learned counsel for the appellant also indicates that the grounds taken are misconceived and not tenable for the reason that a wing of the appellant was a party and the appellant was afforded opportunity to file the written statement after appearance and also the evidence on record and the interest is awarded on the compensation which had become due on the date of accident, therefore, the grounds are also misconceived and not tenable.

18. The application for condonation of delay in filing appeal is, accordingly, **dismissed**.

19. Consequently, the appeal is **dismissed**. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 4.12.2024
Haseen U.