

Court No. - 5

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 63 of 2022

Appellant :- Union Of India Thru. General Manager,Northern Railway,Baroda House, New Delhi

Respondent :- Smt. Rekha And 4 Others

Counsel for Appellant :- Mahendra Kumar Misra

Hon'ble Abdul Moin,J.

(C. M. Application No. 1 of 2022)

1. Heard Shri Mahendra Kumar Mishra, learned counsel for the appellant on the application for condonation of delay.

2. From perusal of record it appears that there has been patent abuse of process of Court which has been adopted by the appellant Union of India. The Court is constrained to say this considering that the initial award of the learned tribunal is dated 28.04.2017 passed in Case No. OA/II/U/716/10 in re: Smt Rekha and others vs Union of India whereby learned Railway Claims Tribunal had awarded an amount of Rs 8 lakhs as compensation on account of death of Late Ram Saran during the course of the train journey in an untoward incident. The aforesaid award was to carry simple interest @ 6 % per annum.

3. The Union of India being aggrieved filed review application namely Rev/A/24/17 under Rule 32 of the Railway Claims Tribunal (Procedure) Rules, 1989 (hereinafter referred to as the Rules, 1989) praying for review of the award passed by learned Railway Claims Tribunal dated 28.04.2017. Learned Tribunal vide the judgement and order dated 21.07.2017 which is part of the memo of appeal rejected the review application. Strangely instead of Union of India challenging the initial award dated 28.04.2017, in its own wisdom, filed a second review application praying for review of the order dated 21.07.2017 that had been passed by learned tribunal whereby the review application had been rejected. Incidentally there is no provision of a second review. The said review application remain pending before the learned tribunal and was thereafter dismissed vide the order dated 31.03.2022.

4. Learned tribunal was of the view that its earlier judgement and order dated 21.07.2017 cannot be reviewed by means of review application as a review cannot be considered an appeal and it is only mistake apparent on the face of record which are to be considered. The Union of India has filed the instant first appeal from order under Section 23 of the Act, 1987 challenging the order dated 31.03.2022 passed in the review as

well as order dated 21.07.2017 passed in the first review application and the initial award dated 28.04.2017 in the original application / claim application filed by the claimants.

5. As per the office report the instant appeal is said to be time barred by 716 days as a period from 15.03.2020 to 28.02.2022 had been excluded considering the judgement of Hon'ble Supreme Court in **re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No(s) 3 of 2020**. However, what the report of the registry does not consider is that there is no provision under the provisions of the Act, 1987 or the Rules 1989 for filing of second review application and thus once the earlier review filed against the judgement and order dated 28.04.2017 passed in the original application had already been rejected vide order dated 21.07.2017 as such in case the Union of India was aggrieved by the said judgement it should have filed the first appeal straight away instead of filing of a second review application and waiting for a decision upon the same for a period of almost 5 years, the same having been filed in the year 2018 i.e. for a period of four years during which time the learned tribunal also did not proceed on the execution application which had been filed by the claimants. Thus on account of the process which has been adopted by the Union of India a period of four years has been lost to the claimants and even the execution case did not proceed further.

6. Further once neither the provisions of the Act, 1987 or the Rules, 1989 provide for filing of second review application and in case the Union of India in its own wisdom decided to file a second review application and the matter remained pending for years on and the same would patently amount to abuse of process of court which has clearly been done by the Union of India in the instant case.

7. The Court now proceeds to consider the application for condonation of delay.

8. From the application filed for condonation of delay it emerges that after the learned tribunal had passed the award dated 28.04.2017, Union of India filed a review which was dismissed on 21.07.2017 thereafter a second review that has been dismissed on 31.03.2022. There is nothing in the said application as to what prevailed on the Union of India to file a second review application. It is settled position of law that review is the creation of statute and the Act, 1987 and Rules, 1989 provide for one review application which could have been filed and in fact was filed by Union of India and dismissed on 31.07.2017. The instant appeal having been filed on 02.08.2022 is clearly barred by laches and delay and no satisfactory

explanation also emerge from a perusal of the application of delay.

9. The delay which often occurs on the part of the State in filing the appeals/revisions has been considered threadbare by the Apex Court in the case of **Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr.** reported in **(2012) 3 SCC 563** wherein the Apex Court after placing reliance on various earlier judgments of the Apex Court, held as under:-

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

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."

10. Likewise, the Apex Court in the case of **Union of India vs. Central Tibetan Schools Admin and Ors.** reported in **(2021)**

SCC OnLine 119 has held as under:-

"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!

*6. The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in *State of M.P. v. Bherulal* [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (L&S) 84] and *State of Odisha v. Sunanda Mahakuda* [State of Odisha v. Sunanda Mahakuda, (2021) 11 SCC 560] . The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in *Postmaster General v. Living Media (India) Ltd.* [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] Despite this, there seems to be a little change in the*

approach of the Government and public authorities.

7. We have also categorised such kind of cases as "certificate cases" filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is time when officers concerned responsible for the same, bear the consequences. The irony, emphasised by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.

8. Looking to the gross negligence and the impunity with which the Union of India had approached this Court in a matter like this, we consider it appropriate to impose special costs of Rs 1 lakh in this case to be recovered from the officer(s) concerned, to be deposited with the Supreme Court Advocates-on-Record Welfare Fund within four weeks.

9. The special leave petitions are dismissed as time-barred in terms aforesaid. Pending application stands disposed of."

11. Incidentally, the judgment of the Apex Court in the case of **Central Tibetan Schools (supra)** is a judgment by three Hon'ble Judges.

12. The Apex Court in the case of **Commissioner of Customs, Chennai vs. Volex Interconnect (India) Pvt. Ltd.** reported in **(2022) 3 SCC 159** has held as under:-

"2. This is one more case of what we have already categorised as "certificate cases" and we do not delve further, as the purpose seems just to bring the matter to the Courts to put a closure to the same without giving any cogent explanation for condonation of delay in terms of Postmaster Generalv. Living Media (India) Ltd. [Postmaster Generalv.Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649].

3. We have also examined the case on merits despite the aforesaid and find that a correct view has been taken by the Tribunal as the Department itself is treating the assessee in the same manner for subsequent years so far as classification is concerned.

4. We are thus of the view that for both the aforesaid reasons, the appeal is not liable to be entertained. The appeal is dismissed accordingly."

13. Recently, the Hon'ble Supreme Court in the case of **Pathupati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA) [2024] 4 S.C.R. 241** has held 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. vs. Katiji and Ors.*², 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.

17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

18. This Court as far back in 1962 in the case of *Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd* has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons,

may refuse to condone the delay depending upon the bona fides of the party."

14. Again, the Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Ramkumar Choudhary** reported in **2024 INSC 932** has held as under:-

"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 Sridevi, 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 Ram 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 heir (2024) SCC OnLine SC 489 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.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of

condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

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34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold."

15. In the aforesaid judgments, the Hon'ble Supreme Court has been of the view that where a case has been presented in the Court beyond limitation, the person 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. Though limitation may harshly affect the rights of a party, it has to be applied with all rigour when prescribed by statute.

16. In the instant case, as already indicated above, there has been a casual, cavalier and lackadaisical approach on the part of the appellant all along inasmuch as, in this case the Union of India, in not having taken proper care to challenge the award dated 28.04.2017 and order dated 21.07.2017 rejecting the review application and thereafter having filed a second review

application though not provided and subsequent thereto an appeal after the aforesaid delay. This is sheer negligence on the part of the appellant and thus, the grounds, as taken in the application for condonation of delay, do not inspire confidence and consequently, the application for condonation of delay merit to be rejected and is accordingly, **rejected**.

17. The Court is of the view that some exemplary cost be imposed on the Union of India for having indulged in abuse of process of law. However at the insistence of Shri Mahendra Kumar Mishra, learned counsel for the appellant, the Court is not imposing any cost. The Union of India is required to be more cautious in future.

(Order on the Memo of Appeal)

18. Since the application for condonation of delay has been rejected, the appeal also stands **dismissed**.

Order Date :- 20.3.2025

J. K. Dinkar