
(2021) 12 SIK CK 0009

In the Sikkim High Court

Case No : I.A. No. 01 Of 2021 In Motor Accident Claim Appeal. No. 05 Of 2021

Branch Manager, Shriram General Insurance Co. Ltd

APPELLANT

Vs

Sarada Devi And Others

RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Code Of Civil Procedure, 1908 — Order 9 Rule 6(1)(a)

Citation : (2021) 12 SIK CK 0009

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Rahul Rathi, Manish Kr. Jain, Neetu Tamang

Final Decision : Dismissed

Judgement

Meenakshi Madan Rai, J

(Civil Appellate Jurisdiction)

1. I.A. No.01 of 2021 is an application seeking condonation of 1897 (one thousand, eight hundred and ninety seven) days delay in filing the Appeal. Learned Counsel for the Appellant while advancing the grounds that contributed to the delay submitted that the delay occurred on account of the fact that the Judgment Debtor/Opposite Party No.2/Appellant herein, was unaware of the Award passed by the Learned Motor Accidents Claims Tribunal, East Sikkim, at Gangtok (for short, "Learned Claims Tribunal"), in MACT Case No.21 of 2015, as it was an ex parte Judgment. It was only after three years when the Respondents No.1 to 3 herein filed MACT Execution Case No.02 of 2018 before the Learned Claims Tribunal that they came to learn of the matter. That, the Kolkata Branch Office after receiving the Notice in the Execution proceedings forwarded the same to the Jaipur Head Office for preferring the instant Appeal. That, as per the internal procedure, the Jaipur Head Officer sent back the File to the Kolkata Division Office for appointing an Advocate in the matter, but due to other

practical problems the File took considerable time to reach the Kolkata Branch Office. Thereafter, the Counsel engaged by the Appellant Company could not file the Appeal due to personal pre-occupation and subsequently, resigned from the empanelment of the Insurance Company. The present Counsel was appointed thereafter on which he advised the Appellant Company to prefer an Appeal and prepared the Memo of Appeal for which he took some time. That, it is a settled position of law that Government and Government Undertakings have been permitted some flexibility in case of condonation of delay due to the fact that it takes time to get papers processed in such Offices. It is urged that the reasons assigned in filing the Appeal constitute sufficient cause and that there is no deliberate delay. That, the Court may take a liberal approach and condone the delay which is unintentional.

2. Resisting the arguments of the Appellant, Learned Counsel for the Respondents No.1 to 3 contended that in the first instance the delay is of almost 5 (five) years. That, despite Notice having been issued and duly received by the Appellant Company in MACT Case No.21 of 2015 they failed to appear before the Learned Claims Tribunal. That, the grounds given by the Appellant with regard to processing of Files does not constitute sufficient grounds to condone delay. That, in the Execution Case receipt of Notice is not denied. However, Notice in the MACT Case No.21 of 2015 was also issued in the same address despite which the Appellant failed to enter an appearance. That, instead of filing the Appeal on learning of the Execution Case No.02 of 2018 they have filed it belatedly on 12-03-2021 (resubmitted on 23-03-2021). Hence, the Petition deserves to be dismissed.

3. I have heard the submissions of Learned Counsel for the parties in extenso and duly perused the documents on record.

4. In the first instance, the Appellant Company claims that they did not receive Notice in MACT Case No.21 of 2015, consequently the Appellant was proceeded ex parte before the Learned Claims Tribunal. At this juncture, it would be beneficial to refer to the provisions of Order IX Rule 6(1)(a) of the Code of Civil Procedure, 1908, which provides as follows;

"6. Procedure when only plaintiff appears.?(1)

.....

(a) When summons duly served.?If it is proved that the summons was duly served, the Court may make an order that the suit be heard ex parte;

....."

5. Evidently, the matter was proceeded ex parte on the ground of non-appearance of the Appellant despite service of summons. The Appellant has not annexed any document for the perusal of this Court to fortify their submissions that they were unaware of the proceedings before the Learned Claims Tribunal, such an allegation cannot be believed or relied upon without the benefit of

perusing documents.

6. The Appeal ought to have been filed within 90 days from 30-09-2015, but has been filed only in the month of March, 2021. The grounds taken for the delay such as File processing methods and movement of File from one Office to the other are obnoxious to say the least. This Court cannot be concerned with how the Office proceedings of the Appellant Company are carried out. Suffice it to note that while carrying out their administrative duties, the provisions of law cannot be disregarded or given a go by especially when the provision is benevolent legislation. No dates of File movement have been revealed by the Appellant from the Kolkata Branch Office to the Jaipur Head Office and thereafter back to the Kolkata Division Office. No dates are revealed with regard to the application seeking a copy of the impugned Judgment, date of receipt of Judgment and other relevant facts.

7. It was urged that it is a settled position of law that Government and Government Undertakings are permitted some flexibility in cases of delay. Admittedly, the Appellant Company is neither a Government Department nor a Government Undertaking, hence the submissions of Learned Counsel for the Appellant is to mislead this Court and cannot be countenanced. Indeed, this Court is aware of the pronouncement in *Office of the Chief Post Master General and Ors. vs. Living Media India Ltd. & Anr.* wherein the Supreme Court in Paragraph 12 held as follows;

"12. 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. 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 fide, 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."

The observation speaks for itself, even with regard to Government Departments there is no blanket condonation of delay. The Court is to exercise its discretion judiciously. No Organisation can take advantage of its deliberate inaction and the facts and circumstances pleaded by the Appellant for the delay do not merit consideration.

8. We may also refer beneficially to the observations of the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others* (2013) 12 SCC 649. In the ratio, while referring to various authorities on condonation of delay the following points inter alia were summarised as guiding principles for such condonation;

"21. From the aforesaid authorities the principles that can broadly be culled out are:

.....

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

.....

21.7. (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

.....

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

.....

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters."

[emphasis supplied]

These principles clearly enunciate the parameters which Courts ought to consider while condoning delay.

9. It is clear from the second proviso to Section 173 of the Motor Vehicles Act, 1988, that the High Court may entertain the Appeal after expiry of the period of ninety days if it is satisfied that the Appellant was prevented by "sufficient cause" from preferring the Appeal in time. While explaining what "sufficient cause" entails, the Hon'ble Supreme Court in *Basawaraj and Another vs. Special Land Acquisition Officer* (2013) 14 SCC 81 held as follows;

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336], *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953], *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629].)

10. In *Arjun Singh v. Mohindra Kumar* [AIR 1964 SC 993] this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not

sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201].)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, p. 266:

"605. Policy of the Limitation Acts.- The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510], *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907].)"

[emphasis supplied]

The parameters discussed in the ratio of *Basawaraj and Another* (supra) in the context of "sufficient cause" is obviously not fulfilled in the instant matter as obtains from the grounds put forth by the Appellant Company, which have been extracted supra.

10. The conduct of the Appellant discloses not only irresponsibility but total disregard for the law and callousness towards the Respondents No.1 to 3. Their circumstances of financial difficulty, which the provisions of the Motor Vehicles

Act, 1988 seeks to mitigate to an extent have not even been considered. This Court is indeed conscious that it would be impossible to ameliorate the mental and emotional trauma of the Respondents No.1 to 3, by way of pecuniary compensation, nevertheless it is an effort by benevolent legislation to at least compensate the financial aspect of the loss. The Appellant Company ought to bear in mind the spirit of the Act and the circumstances it seeks to address. The grounds for delay put forth by the Appellant Company are absolutely frivolous devoid of substance and deserves to be and is accordingly dismissed.

11. The Appellant shall pay total cost of Rs.25,000/- (Rupees twenty five thousand) only, to the Respondents No.1 to 3, within a month from today, failing with they shall pay interest @ 10% per annum on the above amount.

12. Copy of this Order be transmitted to the Learned Claims Tribunal for information.