

(2010) 06 DEL CK 0008

In the Delhi High Court

Case No : Mac App 234 of 2009 and C.M. Application No's. 6980-6981 of 2009

Diamond Copy House

APPELLANT

Vs

Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Citation : (2010) 06 DEL CK 0008

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : S.K. Rungta and Pratiti Rungta, for the Appellant; A.K. Soni, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This application has been moved by the appellant for condonation of 685 days delay in filing the appeal. The Award was passed on 23rd March, 2007. The appeal against the Award has been filed on 11th May, 2009. While stating the grounds of condonation of delay, it was stated that appellant was residing and working for gain in Chandigarh. He had entrusted the work of defending his interest through a counsel Mr. H.S. Pahwa, Advocate. Mr. Pahwa, Advocate did not inform the appellant about the passing of the Award and as such the appellant could not prefer appeal within time. The appellant got the knowledge of passing of the Award in the year 2008. The appellant tried to contact Mr. Pahwa, Advocate but could not ascertain the position. He got back the file of the case from Mr. Pahwa, Advocate in the month of February, 2009. Then he entrusted the case to Mr. Parveen Kumar, Advocate who advised him to file a review petition and accordingly, the review application was filed by him which got dismissed in default on 5th March, 2009. Thereafter, the appellant engaged the present counsel namely Mr. S.K. Rungta, Advocate and filed the present appeal.

2. It is submitted that delay in filing the appeal was not intentional and, therefore, it should be condoned. The appellant learnt about the passing of the

Award when appellant received summons of the execution proceedings initiated by respondent No. 1.

3. The grounds stated in the application itself show that the appellant was negligent in prosecuting the case. A perusal of trial court record shows that appellant had appeared before the Tribunal during the trial of the case throughout through his Advocate but he did not bother to appear in the witness box to prove his case. It was the responsibility of the appellant to prosecute his case and to find out what Award has been passed. Making allegations against the Advocate is the easiest way of escaping the responsibility. It is to be noted that the appellant had not filed any complaint in the Bar Council against Mr. Pahwa, Advocate against whom he alleged that he did not inform the appellant about the passing of the Award.

4. The law of limitation was enacted by Parliament to bring end to litigation after certain period. It is expected that everybody has to be vigilant about his rights and one who sleeps over his rights cannot suddenly approach the Court after a long time to disturb the lower courts orders. Right to appeal is a statutory right and the appellant was supposed to be aware of his right to appeal. His deliberately not appearing as a witness and then not finding out as to what was the Award passed, cannot be a ground for condonation of delay.

5. Even otherwise, I find that the appeal preferred by the appellant has no merits. At the time when accident took place, the cleaner of the truck was driving the truck and caused death of the deceased. The cleaner of the truck had no license. The driver had allowed the cleaner to drive the truck. The appellant, who is the owner of the truck, would be vicariously liable for the act of his employee, whether the act is of negligent driving or the act is of handing over the truck to the cleaner who had no driving license. The appellant has preferred this appeal on the ground that the Tribunal wrongly allowed the insurance company to recover the amount of compensation from the owner. I consider that the appeal should otherwise fail.

In view of the above discussions, the applications and the appeal are dismissed.