

(2015) 01 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : CMP(M) No. 1820/2014

Dinesh Kumar Sharma Construction Pvt. Ltd.	APPELLANT
Vs	
Gulzar Begum	RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 01 SHI CK 0011

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Maan Singh, for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Appellant has assailed the award dated 27.12.2013 rendered by the Motor Accident Claims Tribunal, Chamba in MAC Petition No. 84/2011 (279/2013). The appeal is barred by 267 days. The appellant has filed separate application under section 5 of the Limitation Act for condonation of delay in filing the appeal.

2. According to the averments contained in the application, award was made by the Motor Accident Claims Tribunal, Chamba on 27.12.2013. The applicant came to know about the award only on 28.11.2014 when he received summons in the Execution Petition. Thereafter, he visited the Tribunal and he was told that the award has been passed against him. He applied for the certified copy of award on 28.11.2014 and the same was supplied to him on the same day.

3. Case of the applicant, in a nutshell, is that he was never intimated by his counsel about the outcome of the case. The applicant was duly represented by the learned Advocate at the time of passing of the award on 27.12.2013. It is not believable that the applicant was not aware of the award since he was duly represented by the Advocate. The applicant has filed an appeal only when the execution has been carried of the award dated 27.12.2013.

4. It is true that the Court ought to be very liberal while considering the applications under section 5 of the Limitation Act, but at the same time the valuable rights accruing to the opposite party cannot be ignored. The applicant has not assigned sufficient reasons for the condonation of delay.

5. Their Lordships of the Hon^{ble} Supreme Court in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another*, have held that liberal approach in condoning delay of short duration and the strict approach in cases of inordinate delay should be applied. Their Lordships have held as under:

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time." 6. Their Lordships of the Hon^{ble} Supreme Court in *Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others*, have held that the liberal approach in considering sufficiency of cause for delay should not override substantial law of limitation, especially when court finds no justification for delay. Their Lordships have held as under:

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in the case of *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, .

23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in the case of *Balwant Singh (supra)*, as follows:--

"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation."

"26. The law of limitation is a substantive law and has definite consequences on the right and obligation of party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its

own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

26. Having recorded the aforesaid conclusions, the High Court proceeded to condone the delay. In our opinion, such a course was not open to the High Court, given the pathetic explanation offered by the respondents in the application seeking condonation of delay.

28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers."

7. The same principles have been reiterated by their Lordships of the Hon''ble Supreme Court in *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, as under:

"15. The expression sufficient cause used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serve the ends of justice. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.

23. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under

Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost."

8. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the application and the same is dismissed.