
(2014) 01 OHC CK 0051

In the Orissa High Court

Case No : Misc. Case No. 986 of 2010 (Arising out of MACA No. 531 of 2010)

Divisional Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Babaji Dalai and Others

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 1 AnWR 776 : (2014) 117 CLT 500 : (2014) 1 OLR 327

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.—This is an application filed u/s 5 of the Limitation Act by the appellant-petitioner, who preferred an appeal assailing the award dated 20.08.2009 passed by learned 2nd MACT, Cuttack in Misc. Case No. 52 of 1992 awarding compensation of Rs. 1,00,000/- along with interest @ 7% per annum in favour of the claimant.

2. It is found that the award was passed on dated 28.09.2009 and the date of valid presentation of the appeal was 06.07.2010. Therefore, the total period occupied is 380 days and after excluding the limitation period of 90 days, there is a delay of 230 days. For that purpose, the above application has been filed u/s 5 of the Limitation Act for condonation of delay indicating "sufficient cause". In paragraph 4 of the application, the appellant-petitioner has explained the delay, which is as follows:

4. That as the said Misc. Case was dismissed on contest by the learned 2nd MACT, Cuttack on 17.04.2003 on the ground that "None of the exhibits disclose the name of the owner of the offending Trekker and the name of the insurer, as such there is no evidence to conclude that O.P. Nos. 1 and 2 are liable to compensate the claimant/petitioners. The said order of the Tribunal was challenged before Hon'ble High Court by the petitioners in MACA No. 485/03 which was set aside and was remitted back for De novo hearing and hence this Award has been passed after De novo hearing. Since there was no policy and

after submitting an affidavit of a responsible Senior Officer who had given evidence by such affidavit that, the alleged cover note number disclosed by the petitioners was not issued by Opp. Party No. 2 on 14.10.92 and in spite of fact that, on the 2nd round, nothing has been changed and the claimant/petitioners have not adduced any evidence except filing R.C. Book which was not disclosed the name of insurer and policy No. mere filing of R.C. Book does not prove that O.P. No. 2 is the actual insurer of the alleged offending Trekker. In spite of the above fact learned Tribunal passed award of compensation in favour of claimant and it being a important issues, Division officer asked their conducting Advocate to give opinion on the said case and after receiving the opinion from learned Advocate, Division office send it to their Regional Office, at Bhubaneswar for their perusal and examination on records and do the needful. The regional office after receiving the certified copy of judgment and deposition and opinion of the learned Trial Court Advocate for O.P. No. 2 decided to prefer appeal and communicated the entire file with instruction to prefer Appeal to their legal cell at Cuttack.

3. On perusal of the reasons assigned, it is found that delay of 230 days has neither been explained nor any sufficient cause has been shown for such delay, rather the contention has been raised with regard to the merits of the case explaining the "sufficient cause" for preferring this appeal.

4. To substantiate the contention, learned counsel for the appellant-petitioner relies upon the judgments of the apex Court reported in Smt. Prabha v. Ramprakash, : 1987 Sup. SCC 339, Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and Rafiq and Another Vs. Munshilal and Another, .

5. So far as the applicability of the judgment in Rafiq and another is concerned, the Supreme Court has dismissed the case in a different context and the same has no application to the present case. So far as the applicability of the judgment in Collector, Land Acquisition, Anantnag (supra), the guidelines fixed by the apex Court in various subsequent judgments and after considering the same, the apex Court in State of Nagaland v. Lipok Ao, >2012 (5) SCC 157, the apex Court in paragraphs 24 and 25 has held to the following effect:

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In case involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of

the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

After holding the same, in paragraph 28 the apex Court has stated as follow:

28. The application filed for condonation of delay and the affidavits of Shri Sirsikar are conspicuously silent on the following important points:

(a) The name of the person who was having custody of the record has not been disclosed;

(b) The date, month and year when the papers required for filing the first appeals are said to have been misplaced have not been disclosed.

(c) The date on which the papers were traced out or recovered and name of the person who found the same have not been disclosed.

(d) No explanation whatsoever has been given as to why the applications for certified copies of the judgments of the Trial Court were not filed till 23.08.2010 despite the fact that Shri Sirsikar had given intimation on 12.5.2003 about the judgments of the trial Court.

(e) Even though the Corporation has engaged a battery of lawyers to conduct cases on its behalf, nothing has been said as to how the transfer of Shri Ranindra Y. Sirsikar operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against.

Similar view has also been taken by the apex Court in *Esha Bhattejee v. Managing Committee of Raghunathpur Nafar Academy and others* in Civil Appeal No. 6183-8184 of 2013 arising out of SLP (C) Nos. 24868-24869 of 2011 in its judgment dated 13th September, 2013.

6. In view of the above authoritative decision of the apex Court, by any stretch of imagination it cannot be said to be a reasonable explanation or proper explanation so as to constitute sufficient cause within the meaning of Section 5 of the Limitation Act, 1963. It is made clear that while deciding whether in a particular matter sufficient cause is established or not definitely each case depends upon the facts and circumstances and while giving the explanation so as to constitute sufficient cause be that an Insurance Company, a Corporation, a Government body or any other Quasi Governmental body, officers who sworn the affidavits must be careful and cautious in explaining the reasons and they are not expected to file affidavits in a casual manner taking vague allegations. In such cases, definitely it cannot be said that such vague reasons may attract the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963. It is suffice to state that each case depends upon the facts and circumstances of the particular specified case and no elaborate guidelines exhaustively can be laid down in this regard. As far as the present case in hand

is concerned, in the light of the nature of the reason which had been specified in the affidavit filed in support of the application for condonation of delay, this Court is satisfied that such reason will not answer the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963.

7. For the reasons stated above, the petition filed by the appellant for condonation of delay of 230 days is dismissed. Accordingly, the appeal filed by the appellant is dismissed being barred by time. The appellant is granted two months time for making deposit of the awarded amount, if the appellant/ Insurance Company is so advised. The statutory deposit made by the Insurance Company be refunded to the learned counsel for the appellant on proper identification.