
(2010) 12 OHC CK 0015
In the Orissa High Court
Case No : Misc. Case No. 1812 of 2009

D.M. New India Assurance Co. Ltd.

APPELLANT

Vs

Salma Khatoon and Others

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 173(1)

Citation : (2011) 1 ILR (Ori) 251

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.S. Bhalla, J.—Heard learned Counsel for the Appellant.

2. Prayer made in the application is for condonation of delay of 644 days in filing the appeal.

3. It is incumbent on a person preferring an appeal u/s 173(1) of the Act to take all care to see that the appeal is filed within time and unless he shows "sufficient cause" which prevented him from preferring the appeal in time in spite of care and diligence, the appellate Court will not be inclined to entertain an appeal preferred out of time. The satisfaction of the court under the Second proviso to Section 173(1) of the Code will naturally have to depend on the Appellant establishing that in spite of all care and diligence it was not possible for it to prefer the appeal in time. The Appellant is required to explain each day's delay. The discretion to condone the delay is to be exercised judicially, that is one is not to be swayed by sympathy or benevolence. Discretion can be exercised in favour of a person if sufficient cause is pointed out. In the instant case, I find that there were series of delay which the Insurance Company could not adequately explain. The Insurance Company as a litigant could not claim a status or right to condone the delay without showing at least a reasonable amount of care and diligence in pursuing its case. The case in hand showed a complete lack

of application on the part of the Insurance Company. Everything appeared to have been handled in a leisurely fashion. The matter was not given the attention it deserved and filing of an appeal was delayed for about 644 days without any sufficient cause.

The ground which is sought to be made out for condoning the delay is of administrative exigencies.

4. Learned Counsel for the Appellant has referred to the cases of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, , State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others, & State of Haryana Vs. Chandra Mani and others, in course of his contention. A reading of these authorities would show that they bear no resemblance to the facts in the instant case and do not in any manner support the point canvassed in the context of the nature and circumstances of the present case.

5. If the delay is to be condoned mechanically on the ground of administrative exigencies, then in almost all cases the Court has to condone the delay. That is never the intention of the Supreme Court while laying down the law for condoning the delay on the ground of administrative exigencies.

6. In view of the above discussion, I do not find any substance or merits in this application for condoning the delay of 644 days in filing the appeal against the award passed by the learned Tribunal.

7. For the reasons stated above, the petition filed by the Appellant for condonation of delay of 644 days is dismissed. Accordingly, the appeal filed by the Appellant is dismissed being barred by time.

8. It is pity that main appeal is not being heard on merit seeing the conduct of the Appellant and thereby making a considerable delay of 644 days in filing the appeal.

Appeal dismissed.