
(2008) 03 DEL CK 0135

In the Delhi High Court

Case No : CM No. 10574 of 2006 in MAC. App. No. 672 of 2006

Har Swaroop Gautam

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1908 — Section 5

Citation : (2008) 03 DEL CK 0135

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; Neerja Sachdeva, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this application moved u/s 5 of the Limitation Act, 1908 read with Section 151 of Code of Civil Procedure, 1908, the appellant seeks condensation of delay of 443 days in filing the present appeal against the award of the Motor Accident Claims Tribunal dated 22.2.2005. The main ground urged by the appellant is that he was unaware of the pronouncement of the award in Suit No. 490/04 (old No. 23/97) made by the Motor Accident Claims Tribunal on 22.2.2005, and the reason given for the same is that the appellant had appointed Sh. S.S. Sharma, Advocate to pursue his matter on his behalf and the learned Advocate had assured the appellant that the case was of civil nature, Therefore, the appellant need not come on each and every date of hearing and whenever his appearance would be required, he would be called upon by the Advocate. It was submitted by the learned Counsel for the appellant that the knowledge of the fact that the final award dated 22.2.2005 had been pronounced by the learned MACT could be gained only in July 2006 when he came to know about the recovery proceedings on receipt of notice from the Office of the Tehsildar. The counsel further urged that this is not a created story as a complaint has also been made to the President of Delhi Bar Council in this

regard. The counsel further submitted that the said Advocate, Sh.S.S. Sharma was engaged by the appellant in 2004 and was given power of attorney in case No. 490/2004 (old No. 23/97). The said counsel did not inform the appellant of the outcome of the said case and on the contrary wrongly informed that the case was still pending. The counsel submitted that the delay of 443 days in preferring the present appeal was due to the unprofessional conduct of the advocate Sh.S.S. Sharma and not the appellant, Therefore, the delay should be condoned. The counsel maintained that the present appeal as well as application for condensation of delay has been made bonafidely by the appellant as soon as he gained knowledge of the pronouncement of the said award dated 22.2.2005 in July 2006 on receiving notice in recovery proceedings, where after he immediately applied for certified copy of the award and other connected documents and also approached the concerned Licensing Authority, District Agra, U.P. and also obtained the necessary verification report about the driver having a valid license. It was contended by the counsel that observation regarding breach of conditions of policy by the Tribunal has been made without any material being placed on record in this regard.

2. The counsel for the appellant has relied on the following judgments in support of his contentions:

1. Krishna Bai and Others Vs. B.S. Desai and Others,
2. Gursharan Singh Sandhu Vs. State Of Haryana and Others,
3. Brestu Ram Vs. Anant Ram and Others,
4. Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others,
5. Manjit Singh Vs. Dr. Suresh Dadra and Another,
6. Dhannalal Vs. D.P. Vijayvargiya and Others,
7. Bhagyamma and Ors. v. Sandeep Crane and Trailer Server and Anr. 2001 ACJ 12
8. 2002 (1) ALT 48 (SC)
9. Branch Manager, LIC of India and Anr. v. Ankita and Anr. 2007 ACJ 2008

3. Per contra, Ms.Neerja Sachdeva, counsel for the respondent refuted the said contentions of the counsel for the appellant and stated that the appellant has concocted a story to seek condensation of delay and the appeal is hopelessly time barred and is liable to be dismissed. It was submitted by the counsel that the appellant intentionally did not appear before MACT and was proceeded ex-parte. However, the driver of the offending vehicle remained present throughout the proceedings and even the appellant appeared in the Court and adduced his evidence after the evidence of the answering respondent was over as would be evident from the perusal of the award, which fact would clearly show that the appellant was aware of various stages of the court proceedings and that is why

he was present at the stage of evidence. The counsel urged that the appellant has not come to the Court with clean hands and his conduct before the Tribunal was totally negligent as would be manifest from the perusal of the award, Therefore, the present application is not bona fide and devoid of any merits. It was maintained by the counsel that the respondent insurance company had proved the breach of terms and conditions of the policy on the part of the appellant, Therefore, recovery rights were granted by the tribunal to the insurer and thus no infirmity can be found in the award. The counsel for the respondent has relied on the following judgments in support of her contentions:

1. Prakash and Another Vs. Managing Director, K.S.R.T.C. and Others, and

2. V.K. Thukral and Others Vs. Lalit and Others,

4. I have heard learned Counsel for the parties and have perused the record.

5. On perusal of the records, it comes into light that Sh. Har Swaroop Gautam, appellant herein was proceeded ex-parte on 13.10.1999 as he did not appear despite service. Further, it was observed by the Tribunal that after evidence of the petitioner was closed, in rebuttal, Sh.Har Swaroop Gautam himself appeared as R1W1 for respondent's evidence along with his counsel, Sh.S.S. Sharma. The tribunal while considering liability of the insurance company took into account the statement of the appellant. In his deposition he stated that he had seen the driving license of the driver before appointing him but in his cross-examination he could not disclose whether the driving license was in the form of the paper book or not and rather replied that the incident was about 10 years old and so he did not remember it. Further during his cross- examination the present appellant denied the receipt of original of the legal notice, Ex. R1W1/X through which he was asked to be present before the tribunal on the date fixed along with the driving license of the driver and the original insurance policy but when he was confronted with the AD Card, EX R1W1/X4, he admitted his signatures. The tribunal also observed that the present appellant denied receipt of the legal notice but he could not explain that when his signatures were there on the AD Card then how come he did not receive the said legal notice. On the basis of the above observations the tribunal concluded that the deposition of the appellant cannot be relied on, particularly, when he failed to file his written statement initially and then later appeared in the witness box only after the insurance company had examined their witnesses. From the above observations of the Tribunal, it would be manifest that the appellant has been careless from the very beginning and has been trying to mislead the Court. The story that he was misled by his counsel Sh.S.S. Sharma also cannot be given any credence in the facts of the present case. The judgments relied upon by the counsel for the appellant are also of no help to him in the facts and circumstances of the present case. In relation to the period of limitation, the Apex court in Popat and Kotecha Property Vs. State Bank of India Staff Association, has observed as under:

7. The period of limitation is founded on public policy, its aim being to secure the

quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e. the Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal.

...

9. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time.

6. Although Section 5 of the Limitation Act is a salutary principle engrafted in the statute to rescue those who are not able to take timely legal steps but such protection is meant for only those who are genuine, honest and diligent in pursuing legal remedies and not for those who are negligent, reckless and try to misuse the said provision as a tool for delaying available legal remedies due to malafide reasons. In this background, the conduct of the appellant needs to be examined. The main plea taken by the appellant is that the advocate appointed by him did not inform him about the final judgment dated 22.02.2005 having been pronounced by the learned MACT and the appellant came to know about the said judgment of the MACT only when the recovery proceedings were initiated by the office of the Tehsildar against him. To show his bonafide, the appellant had also filed a complaint No. 1386 to the Bar Council of Delhi against the misconduct of the counsel. It would be thus, evident that the appellant has put entire blame on his counsel, firstly, for dissuading the appellant from regularly appearing in the case and secondly, when the appellant was not informed about the decision given by the tribunal. One cannot deny this fact that there may be many cases where the lawyers betray the trust of their clients by not properly representing them or by not rendering proper advice to their clients but it is also true that in majority of the cases lawyers are being made easy scapegoats even for the irresponsible and reckless conduct of the litigants

themselves. It is not expected of a party who is well educated to claim ignorance and to be easily misled by his advocate in comparison to a poor, rustic and unwary litigant. The appellant in his deposition has admitted that he was a graduate and Therefore, from such a person it is least expected that he would not follow his case just on the alleged ill advice of the counsel. The appellant himself had appeared in the court and if no communication is made by his counsel about the final outcome of the said case or some misrepresentation made by the counsel then the appellant himself should have ascertained the true facts of the case by approaching the said MACT tribunal. It is also not worthy to point out that appellant made attempts to verify the genuineness of the driving license from the Licencing Authority, District Agra (UP) after the recovery proceedings were initiated against him. It was for the appellant to have placed correct facts before the court not only by way of filing the written statement but by placing the correct driving license on record and this was not done by the appellant despite he had entered the witness box to give his statement. The pleas thus taken by the appellant in the present application do not inspire any confidence. Mere making of a complaint against the advocate would not give the appellant any special advantage as the appellant has not placed on record action, if any, taken by the Bar Council of Delhi against the said advocate. I am of the view that the sole object of the appellant is to delay the execution of the award of the year 2005 despite having full opportunity, Therefore, no indulgence can be given to such a litigant by reopening an award passed in 2005. Although, justice oriented approach has to be taken by the court when substantive justice and technical considerations are pitted against each other but that would not mean that a litigant has a free license to approach the court at his own sweet will at any convenient time, specially when he does not come to the court with clean hands.

7. On the basis of above discussion, I do not see any sufficient cause in condoning the delay of 443 days.

8. Dismissed.