
(2001) 10 MP CK 0018
In the Madhya Pradesh High Court

Khuda Baksh (deceased) through his L.Rs. and Others	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Limitation Act, 1963 — Section 15, 5
Railway Claims Tribunal Act, 1987 — Section 17
Railways Act, 1989 — Section 106

Citation : (2002) 2 ACC 265 : (2002) 1 MPJR 97

Hon'ble Judges : V.K. Agarwal, J; K.K. Lahotia, J

Bench : Division Bench

Judgement

V.K. Agarwal, J.

By this common order M.A. No. 1154/1996 and M.A. No. 1034/1996 (1997 7) are being disposed of as both the said appeals involve common question.

The original appellant Khudabaksh filed claim petitions before the Railway Claims Tribunal, Bhopal claiming compensation for damages suffered by him on account of short delivery of consignment booked by him. The said petitions were admittedly filed after three years but before the expiry of three months thereafter from the date of booking of the goods. An application u/s 15(2) of the Limitation Act, read with Section 17(2) of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as "Act" for short), was filed. It was averred in the said application that as notice u/s 78(b)(now u/s 106 of the Railway Act, 1989) was a statutory requirement; hence, the petitioner/appellant was under a bona fide belief and was also legally advised that in computing the period of limitation, period of notice of three months could be excluded. In other words the claim could be preferred within a period of three years and three months.

Learned Claims Tribunal framed as many as five issues, one of which was as to whether, the application is barred by limitation as was alleged by the respondent. All the issues were dealt with by the Claims Tribunal together and the claim petition was dismissed by the Tribunal holding that there was no sufficient reason

for condonation of delay in filing the claim petition.

During the pendency of these appeals, the original claimant/appellant Khudabaksh has expired. His Legal Representatives have been substituted in his place.

The learned Counsel for the appellant mainly urged that the Claims Tribunal erred in not taking into consideration the facts and circumstances of the case while rejecting the claim petition as barred by limitation. It has been submitted that delay in filing the application should have been condoned in view of the law laid down by the Supreme Court in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, . It has been submitted that the expression "sufficient cause" should have been liberally construed and should have been given meaningful interpretation so as to subserve the ends of justice. It has further been submitted that in the instant case since notice was statutorily required to be served before filing the claim petition, the claimant/appellant suffered a bona fide belief that the claim petition could be preferred within a period of three years three months. In other words, while computing limitation for filing claim petition, the period of three months of notice could be excluded.

As against this, the learned Counsel for respondent supported the impugned order and submitted that the appellant was grossly negligent and no sufficient cause for delay has been disclosed in his application u/s 17(2) of the "Act". It has further been submitted that the said application is also not supported by an affidavit.

It is noticed that in both the appeals, the learned Claims Tribunal has mentioned in the impugned order that the application for condonation of delay has been filed u/s 15(2) of the Limitation Act read with Section 17(2) of the "Act", but the application as above is not available on the record of the Tribunal of claim case O.A. No. 53/1993. The said application though filed in O.A. No. 55/1993 is also not supported by an affidavit.

The Supreme Court in *Mst. Katiji's case* (supra), laid down that the expression "sufficient cause" employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner subserving the ends of justice - that being the life purpose for the existence of the institution of Courts. Liberal approach, therefore, has to be adopted in the matter of consideration of question of condonation of delay. The Supreme Court in that case has stated:

The Legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life - purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not

appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

- (1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- (2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- (3) "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.
- (4). When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay.
- (5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
- (6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

It is also clear that u/s 17(2) of the "Act", delay can be condoned if sufficient cause therefore is shown. In the facts and circumstances of the case, it appears just and proper to permit the appellants to file fresh application duly supported by an affidavit and other documents in order to show that there was sufficient cause for the delay caused in filing the claim petitions.

These appeals are allowed and the impugned orders dismissing the claim petitions of the appellants, as barred by limitation are set aside. The learned Claims Tribunal shall afford an opportunity to the parties and consider the matter of condonation of delay as envisaged by Section 17(2) of the "Act". The appellants shall be at liberty to file an appropriate application as above before the Claims Tribunal within a period of two months from the date of this order. On an application as above being filed, the Claims Tribunal shall consider and decide it in accordance with law, after affording the parties due opportunity of hearing keeping in view the above observations. The record of claim cases be sent back forthwith to the Railway Claims Tribunal, Bhopal.