

(2012) 01 AHC CK 0666

In the Allahabad High Court

Case No : Civil Misc. Delay Condonation Application No. 151307 of 2011 in First Appeal From Order Defective No. 744 of 2011

Mahesh Rai

APPELLANT

Vs

Smt. Aysha Begum and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Limitation Act, 1963 — Section 14, 5

Citation : (2012) 01 AHC CK 0666

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Sanjay Misra, J.—This is an application for condonation of delay in filing the appeal. Notice was issued on this application. The respondent No. 7 has put in appearance through Sri Viqar Ahmad Ansari, Advocate and in view of the office report dated 1.10.2011, notice on the other respondents was deemed sufficient. Sri Viqar Ahmad Ansari, learned counsel for the respondent No. 7 (Oriental Insurance Company) has filed his counter affidavit in the condonation of delay matter.

2. Heard Sri S.K. Chaturvedi, learned counsel for the appellant and Sri Viqar Ahmad Ansari, learned counsel for the respondent.

3. The stamp reporter has reported that this appeal is beyond time by 8 years and 157 days. Learned counsel for the appellant has referred to the affidavit filed in support of the condonation of delay application to state that the Motor Accident Claims Tribunal, Jhansi decided the claim of the claimant-respondents No. 1, 2 and 3 by its judgement and order dated 06.09.2002 whereagainst the appellant who is owner of the vehicle filed a review petition on 7.10.2002, which was ultimately dismissed on 4.4.2011. Learned counsel for the appellant states thereafter on 11.5.2011 i.e. within 90 days of 4.4.2011 he has filed this appeal and therefore, the benefit of Section 14 of the Limitation Act be granted to him

since he was bonafide pursuing a remedy against the impugned award.

4. Sri Viqar Ahmad Ansari, learned counsel for the respondent has relied on paragraph 8 of his counter affidavit to state that even the review petition was dismissed in default on 2.9.2006 and recall application was filed in the year 2010, therefore, the benefit of Section 14 or Section 5 of the Limitation Act can not be granted to the appellant.

5. Having considered the submission of learned counsel for the parties and perused the record, the dismissal in default of review petition on 2.9.2006 is not denied. The application for recall of the order dated 2.9.2006 dismissing the review petition in default has been finally decided by the impugned order, whereby the application for recall of the order dated 2.9.2006 has been dismissed and the review application itself has been dismissed as not maintainable. The aforesaid circumstance indicates that the appellant was pursuing the remedy of review from 7.10.2002, which application was finally dismissed on 4.4.2011 as not maintainable and therefore, for the purpose of limitation of filing this appeal, the period from 7.10.2002 to 4.4.2011 can be considered for condonation of delay u/s 14 of the Limitation Act. The appellant appears to have been pursuing the remedy of review bonafide and there is no circumstance indicated that it was not a bonafide pursual of his application for review.

6. In view of the aforesaid circumstances, the application for condonation of delay requires to be allowed. The delay of 8 years and 157 days in filing the present appeal is condoned. The delay condonation application is allowed. Office may give a regular number to this appeal, in case there is no other defect and list it for admission after two weeks.

No order is passed as to costs.