

(2024) 02 SIK CK 0008

In the Sikkim High Court

Case No : I.A. No. 01, 02 Of 2023 In Motor Accident Claim Appeal 99 Of 2023(Filing No.)

Manager, The New India Assurance Co. Ltd.

APPELLANT

Vs

Krishna Bahadur Mukhia And Another

RESPONDENT

Date of Decision : 19-02-2024

Acts Referred:

Citation : (2024) 02 SIK CK 0008

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Dipayan Roy, Vidya Lama, Nima Tshering Sherpa

Final Decision : Disposed Of

Judgement

Meenakshi Madan Rai, J

Learned Counsel Ms. Vidya Lama and Mr. Nima Tshering Sherpa enter appearance for the Respondents No.1 and 2 today and have filed Vakalatnama.

I.A. No.02 of 2024 is an application filed by the Applicant for placing documents on record, which includes, photocopy of Notice to Show Cause dated 12-02-2024 and photocopy of the Order dated 08-02-2024, of the of the Learned Motor Accidents Claims Tribunal, East Sikkim, at Gangtok (hereinafter, the "Claims Tribunal"), passed in MACT Execution Case No.09 of 2023 (Krishna Bahadur Mukhia vs. Branch Manager, New India Assurance Co. Ltd.).

It is submitted by Learned Counsel for the Applicant that the Notice to Show Cause as to why warrant of arrest should not be issued against the Applicant was issued on 12-02-2024, much after this Court was seized of the Appeal filed by the Applicant, as apparent the Order of this Court dated 24-11-2023. However, the prayer for stay could not be urged due to an error in computation of the number of days which had led to the delay in filing the Appeal.

It is submitted that in I.A. No.01 of 2023 filed on 24-10-2023, the Applicant had

sought for condonation of delay of 144 days, following which an I.A. dated 01-12-2023 (better Affidavit) was filed on 01-12-2023, with the permission of the Court wherein the delay was computed as 55 days. The grounds for the delay have been detailed in the I.A. dated 01-12-2023.

Learned Counsel for the Applicant submits that an application for Stay of Execution with Affidavit was also filed along with the I.A. No.01 of 2023 dated 24-10-2023. That, the delay of 55 days in filing the Appeal be condoned which arose on account of the grounds given in the Petition and as the Applicant-Company is a large organization which has various official niceties to be complied with. It was also urged that proceedings in MACT Execution Case No.09 of 2023 (Krishna Bahadur Mukhia vs. Branch Manager, New India Assurance Co. Ltd.), pending before the Claims Tribunal, be stayed till disposal of the present Appeal.

Vehemently opposing the prayers of Learned Counsel for the Applicant for condonation of delay and stay of the proceedings of MACT Execution Case No.09 of 2023 (Krishna Bahadur Mukhia vs. Branch Manager, New India Assurance Co. Ltd.), it is submitted by Learned Counsel for the Respondents No.1 and 2 that when the application for condonation of delay dated 24-10-2023 and the subsequent application dated 01-12-2023 was made over to them, no details were put forth by the Applicant regarding the date of the receipt of the copy of the Judgment of the Learned Claims Tribunal by the Applicant nor were necessary requisites made over to the Respondents along with the application to enable them to examine the grounds for the delay. That, the grounds enumerated for the delay are insufficient and merely stating that the File travelled from one office of the Applicant-Company to the next does not suffice as adequate grounds for explaining the delay. Hence, the Petition be rejected and the execution proceeding before the Learned Claims Tribunal be permitted to run its due course.

I have given careful consideration to the submissions put forth by Learned Counsel for the parties. I have also perused the photocopy of the Order dated 08-02-2024 and Show Cause Notice dated 12-02-2024 of the Learned Claims Tribunal.

Having perused the Order of the Learned Claims Tribunal, it is evident that the Learned Claims Tribunal was aware that necessary steps had been taken by the Applicant-Company before this High Court by impugning the Judgment of the Learned Claims Tribunal, albeit belatedly. For the sake of judicial propriety, the Learned Claims Tribunal could have stayed its hand from issuing further orders when this High Court was seized of the matter. [See Kishor Bhikansingh Rajput vs. Preeti Kishor Rajput, 2007 (3) Bom.C.R. 279 and Pradhyumansinh Bhavubha Jadeja vs. Sitaba Girvansinh Gohil, 2019 SCC OnLine Guj 1911].

Be that as it may, having given due consideration to the grounds for the delay, the grounds are found satisfactory and the delay is condoned subject to payment of costs of ₹ 20,000/- (Rupees twenty thousand) only, to be paid by the

Applicant to the Respondents No.1 and 2 in total, within ten days from today.

I.A. No.01 of 2023 and I.A. No.02 of 2024 stand disposed of.

Register the Appeal and the Stay application.

Heard on I.A. No.03 of 2024, which is an application filed by the Applicant seeking stay of the Proceeding in MACT Execution Case No.09 of 2023 (Krishna Bahadur Mukhia vs. Branch Manager, New India Assurance Co. Ltd.), pending before the Learned Motor Accidents Claims Tribunal, East Sikkim, at Gangtok.

Let the Execution Proceeding as detailed supra, be stayed until further orders of this Court.

List on 05-04-2024 for hearing on admission.