
(1999) 01 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal (Defect) No. 1241 of 1997

National Insurance Co. Ltd.

APPELLANT

Vs

Suresh Kumar and Others

RESPONDENT

Date of Decision : 20-01-1999

Acts Referred:

Evidence Act, 1872 — Section 41, 42, 43

Limitation Act, 1963 — Section 5

Penal Code, 1860 (IPC) — Section 304A

Citation : (1999) 2 RLW 817 : (1999) 3 WLC 178 : (1999) 1 WLN 85

Hon'ble Judges : A.K. Singh, J

Bench : Single Bench

Judgement

A.K. Singh, J.—Heard the arguments regarding the application u/s 5 of the Limitation Act.

2. According to the office report, there is 47 days delay in filing the appeal. The award was made by the M.A.C.T. on 21.1.1996. The appeal was filed on 23.5.1997. In the affidavit filed by Shri M.L. Mangala it is stated that the application that copy of the judgment was filed on 21.12.1996. The copy of the judgment was ready on 4.1.1997 and was received by the local advocate of the appellant at Jalore on 15.1.1997. It is further stated in the affidavit that on 16.1.1997, the copy was forwarded to the appellant's Divisional Office at Jodhpur and it was received in that office on 17.1.1997. The appellant thereafter sought opinion of its advocate and the opinion of the advocate was given on 21.1.1997. The Divisional Office received the opinion of the advocate on 22.1.1997 and after completing necessary official formalities sent the file to Regional Office, Jaipur on 27.1.1997 for permission to file the appeal.

3. After about one month, Regional Office, Jaipur sent a letter to the Divisional Office, Jodhpur to give a clear cut recommendation and pointed out that there should be some basis for such recommendation. Instead of receiving the letter from the Regional Office, no reply was made and on 17.3.1997, a D.O. letter was

addressed by the Divisional Office, Jodhpur to the Dy. Manager, Legal Cell Office to Jaipur make a pointed reference to the categorical opinion of the counsels and making a categorical recommendation to allow the filing of the appeal in the High Court. It was also pointed out in that letter that the instruction should be sent as early as possible before 31.3.1997. It is also stated in the affidavit that on 31.3.1997 at about 5:00 p.m. a telephonic request was made for the needful. However, the office did not reply and on 9.4.1997 an urgent D.O. letter was again addressed to Shri P.C. Agarwal requesting him to send necessary instructions and Anr. D.O. letter was sent on 2.5.1997. There is nothing to indicate why there was a delay in sending the reply of the D.O. letter.

4. It is further stated in the affidavit that the competent authority took decision to file the appeal and the decision was communicated to the Jodhpur Divisional Office vide letter dated 15.5.1997 which was received in the office on 20.5.1997.

5. After carefully going through the averments made in the affidavit it appears that substantial delay has occurred and it has not been explained. In the eye of law, the appellant must be treated as a single entity. It is a corporate body and its different officers cannot be assigned independent status, so far as the application u/s 5 of the Limitation Act is concerned. It was for the appellant to have taken care that no unnecessary delay occurs by its various offices in dealing with the appeal.

6. Every corporate body having several components is at liberty to create as many offices as it likes and it is also at liberty to prescribe the procedures prescribing how a paper or a file shall be dealt with by several branches or officers, but the responsibility for the delay must be assumed by the appellant itself. A balance has to be struck between the necessity of creating sophisticated, long and complicated, time consuming procedures, and the necessity of the complying with the requirement of law relating to the limitation. It is not as if the legislature or the courts should be made dependant on the sweet will of the corporate bodies who pay no need to necessity of creating an effective procedure for quick decision by their officers and servants.

7. In the instant case, the delay which has occurred in filing of appeal does not appear to have been properly explained. At one place in the affidavit it is pointed out that Regional Office was informed that it has to send the permission to file the appeal at an early date and the telephonic communication was also made and in spite of that the officers working in the Regional Office did not care to take prompt action in the matter. In place of communicating the permission to file the appeal by 31.3.1997, the Regional Office kept complete silence necessitating two D.O.'s, one on 9.4.1997 and other on 20.5.1997. There is no explanation why the Regional Office did not take action in the matter promptly.

8. The learned Counsel for the respondent has drawn my attention to the decision given by a learned Single Judge of this Court in New India Insurance Co. Ltd. and Others Vs. Smt. Keshar and Others, In that case there was a delay of

only 16 days but the Insurance Co. has failed to explain the delay. The learned Judge, after considering the law in this behalf, observed that there is no straight Jacke formula for condoning the delay in all cases on the ground of administrative exigencies. First of all "the" case has to be made out for the same and delay has to be explained by making out a sufficient cause in condoning the same. I respectfully concur with the view taken by the learned Single Judge.

9. Frequently, this Court is requested to condone delays which are caused by complex procedures devised by the corporate bodies. The delay in transmission of the files from one office to another; the delay in considering the matter by the concerned officers in the various offices and the delay in arriving at the decision by competent officers/authorities and communicating the same to its subordinates is often pleaded as "sufficient cause" for the delay caused in filing of appeals/revisions etc. At the cost of a repetition, it may be pointed out that those who create complex procedures prescribing the routing of files through many officers or hands must ensure that the complexity of the procedure does not become counter-productive in the sense that it produces delay which is likely to defeat the very purpose for which the procedure is devised. The responsibility for expediting the matter must also be appreciated after the procedure is devised by the corporate body for compliance by its officers. The responsibility for doing so lies with the corporate body itself. If it fails to do so and the delay remains unexplained, the Court will have no option but to reject the applications for condonation of delay.

10. The learned Counsel for the appellant has further submitted that it is a case in which on merits the appeal is likely to succeed because the person who appeared in the witness box gave evidence that he was driving tractor in question where as the person who was convicted in a case u/s 304-A IPC was some other person. The learned Counsel for the appellant has submitted that in view of the verdict of conviction passed u/s 304-A IPC, the submission given by some other person that he was in fact driving the tractor in question, must be regarded as totally false. The learned Counsel for the appellant was asked how the verdict given in the case u/s 304-A Indian Penal Code was relevant in the proceeding before the M.A.C.T., in view of Sections 41, 42 and 43 of the Evidence Act. He did not give any satisfactory answer.

11. For the reasons stated above, I am not convinced that it is a case in which delay should be condoned u/s 5 of the Limitation Act. The application u/s 5 of the Limitation Act is hereby dismissed. The main appeal stands disposed of accordingly.