

(2012) 12 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : C.M.P. (M) No. 1261 of 2011 in First Appeal from Order No. 317 of 2011

Oriental Insurance Company

APPELLANT

Vs

Smt. Padma Devi and Others

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14, 5

Citation : (2013) 2 ShimLC 610

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : G.C. Gupta and Mr. Pawan Kumar, for the Appellant; Ajay Kumar , Mr. Dheeraj K. Vashishat, Advocate for the Respondent No. 1, Mr. Arvind Sharma, Advocate for the Respondent No. 2 and Mr. Dibender Ghosh, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Dev Darshan Sood, J.—This application has been preferred by the appellant praying for condonation of delay in instituting the appeal which has been instituted against the award of the learned Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr, District Shimla. The appeal is barred by 2 years 8 months and 1 day. Prior to the institution of this appeal, the appellant had filed a CWP No. 121 of 2009, titled: Oriental Insurance Company Limited v. Smt. Padma Devi and others, decided on 23.8.2011, challenging the legality of the award on a number of grounds. The writ petition was instituted on 8th January, 2009 and decided on 23rd August, 2011. The concluding part of the judgment reads:--

3. In view of above, the petition is disposed of with liberty reserved to the petitioner to seek its remedy, if any, before the appropriate Court/Forum, in accordance with law, if so advised.

2. I have noticed these facts for the reasons that the appellant seeks protection

of Section 14 of the Limitation Act on the ground that wrong remedy was being pursued by the appellant. The contentious stand apart taken by the parties, what cannot be denied is that the award was made on 6.9.2008. Copy of the judgment was applied for on 8th September, 2008, which was attested on 27.9.2008 and delivered on 1.10.2008. The writ petition was instituted on 8th January, 2009, admitted for hearing on 15.6.2009 and decided on 23.8.2011. The appellant was in Court for a period of more than 2-1/2 years. CMP No. 7222/2011 was filed in the writ petition supra on 28.6.2011 with the prayer that a sum of Rs. two lacs be released in favour of the claimant, which application was considered by the Court and a sum of Rs. one lac was released to her on 25.7.2011. No reply to the writ petition has been filed.

3. The parties were allowed to lead evidence on the application u/s 5 of the Limitation Act which was resisted by the respondents on a number of grounds inter alia that the letter (Ex. AW-1/B) relied upon by the appellant is a procured and forged letter which fact stands established from the evidence on the record. Shri Balbir Singh, Senior Divisional Manager of the Insurance Company appeared as AW-1. He was cross-examined at length by the learned Counsel for the respondent, who pointed out the overwriting on the letter Ex. AW-1/B, which according to him was possibly resorted by the advocate who had written the letter and he could not said anything about the cuttings and interpolation at point "C". He also admitted that he neither brought diary and dispatch register nor the brief sent by the Counsel etc. Statement made on behalf of the respondent was that the cause was neither genuine nor bonafide but is something which has been cooked up by the respondent only for the purposes for obtaining a favourable order from the Court.

4. I have heard learned Counsel for the parties.

5. Learned Counsel appearing for the respondent, relying upon the decision of this Court in Karta Ram Gupta and Another Vs. Ashwani Kumar Sharma (Since Deceased), urged that the explanation for condonation of delay must be plausible and should not lack bonafide. In that case the Court, relying upon the decision of the Supreme Court in Balwant Singh (Dead) Vs. Jagdish Singh and Others, holds that the facts of the case before it did not constitute a ground for condonation of delay Learned Counsel also relies on the decision in Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, on this issue. Lastly, reliance was placed on the decision of the Supreme Court in Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another,

6. There is no doubt on the settled proposition of law. What I find from the facts of the present case is that the appellant has been pursuing his remedy, though under Article 226 of the Constitution of India and the writ petition as noticed had been admitted for hearing. Section 14 of the Limitation Act postulates prosecution of remedy with due diligence in a wrong Forum. I cannot accept the submission made on behalf of the respondent that due diligence was not exercised by the appellant because the writ petition was infact admitted by a

Division Bench of this Court which prima facie found substance in what was urged and thereafter, after a period of more than 2? years, it is held that the petition was not maintainable. In these circumstances, this application is allowed. I have said nothing so far as the evidence of the appellant is concerned, nor on the purported sharp practices resorted to as urged by the learned Counsel for the respondent.