

(2013) 10 KAR CK 0244
In the Karnataka High Court
Case No : Misc. First Appeal No. 8401 of 2012

Sadik	Vs	APPELLANT
Mohammed Farook and The United India Insurance Co. Ltd.		RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 10 KAR CK 0244

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Mahesh Kiran Shetty, for the Appellant;

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—This appeal is directed against the judgment and award passed by M.A.C.T., Kundapura, dated 18th March 2011 in M.V.C. No. 547/2006, seeking for enhancement of compensation. On account of there being delay of 439 days in filing an appeal, an application I.A. No. 1/2012 has been filed u/s 5 of the Limitation Act seeking condonation of the same. The reason assigned by claimant for said delay is extracted hereinbelow:

2. I submit that, I have preferred the above appeal being aggrieved by the judgment and award passed by Fast Track MACT., Kundapura in MVC No. 547/2006 dated 18.3.2011. I have challenged the said order on the ground of quantum. Due to the said accident I sustained disability and as I could not go to work and I fell into deep financial crisis, I had to borrow from private financiers for my livelihood. I am still under financial problems. Hence, I could not make arrangements for filing the appeal. Now with a great difficulty I have arranged the money from my well wishers and relatives for filing this appeal. Due to these reasons I could not file appeal in time.

3. I submit that, the delay in filing the above appeal is not intentional and caused beyond my control for the reasons stated herein above if the accompanying

application is not allowed, I will be put to great hardship and irreparable loss and on the contrary, no hardship would be caused to the respondents.

2. It is no doubt true that it is not the length of delay which requires to be considered by this Court but the cause shown i.e., existence of sufficient cause which requires to be considered and as to whether delay is to be condoned by accepting the cause shown. No litigant would stand to benefit in approaching the Court belatedly. However, if the cause shown is not sufficient or in other words, cause shown is insufficient, then, this Court would be slow in condoning such delay. When the delay is inordinate and unexplained and reasons given in the application or the affidavit supporting such application as the case may be is fraught with vagueness, in such circumstances, this Court would not condone the delay. Hon'ble Apex Court in catena of decisions have repeatedly held that technicalities had to yield to substantial justice. On the ground of delay, the larger relief to which the litigant may be entitled to cannot be deprived of. At the same time, this Court cannot lose sight of the fact that delay disentitles to any relief since delay defeats equity. Hon'ble Apex Court in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, has held that courts should adopt liberal approach in condoning delay. It has been held as under:

3. 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 sub-serves 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 seconds 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 a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

3. Hon"ble Apex Court in the case of Lanka Venkateswarlu (D) by Lrs vs. State of A.P. & others (C.A. Nos. 2909-2913/2005 disposed of on 24.02.2011) has held that concept of "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. It has been held that especially in cases where the Court concludes that there is no justification for the delay, such appeals should not be entertained. It has been held by Hon"ble Court in Amalendu Kumar Bera & Amp; & others vs. State of West Bengal (Civil Appeal No. 2677/2013 disposed of on 22.03.2013 to the following effect:

We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the Respondent-State. There is no dispute that the expression "sufficient cause" for the explaining every days" delay. However, it is equally well settled that the Courts albeit liberally considered the prayer for

condonation of delay but in some cases the Court may refuse to condone the delay in as much as the Government is not accepted to keep watch whether the contesting respondent further put the matter in motion. The delay in official business requires its pedantic approach from public justice perspective in a recent decision in the case of Union of India (UOI) and Others Vs. Nripen Sarma, the matter came up against the order passed by the High Court condoning the delay in filing the appeal by the appellant-Union of India. The High Court refused to condone the delay on the ground that the appellant-Union of India took their own sweet time to reach the conclusion whether the judgment should be appealed or not. The high Court also expressed its anguish and distress, the way the State conduct the cases regularly in filing the appeal after the same became operational and barred by limitation.

4. Keeping the principles enunciated in the above judgments, when the facts on hand are examined, it would clearly indicate that accident in question had occurred on 23.2.2006. Tribunal passed judgment and award on 18.3.2011. Certified copy was applied after a period of eight months i.e., on 26.11.2011 and thereafter i.e., on 28.8.2012, appeal has been filed after a period of nine months. Thus, there is delay of 439 days in filing the appeal. In the first stage, appellant has not explained as to the reason for not applying the certified copy of the award even after a period of eight months from the date of, passing of the award and in the second stage i.e. after obtaining certified copy on 15.12.2011 till the date of filing of the appeal on 28.8.2012, there being a delay of nine months, same is also not explained. Thus, the cause shown is bereft of material particulars and absolutely I do not find any good ground to condone the delay.

5. As discussed hereinabove, in the instant case, cause shown is not only in sufficient, but also vague, bereft of material particulars, bereft of facts not supported by cogent material and cause shown is not even in the proximity of truth. Even otherwise, when the award in question is examined on merits, it would indicate that claimant had sustained fracture of right femur of right thigh and other three minor injuries viz., abrasion and lacerated wounds. Doctor has opined that there is 12% disability to the right lower limb and 6% to the whole body. Taking into consideration the avocation of the claimant being a mechanic, Tribunal has awarded a global compensation of Rs. 1,24,000/-, which is just and reasonable and it does not call for any enhancement. Hence, question of issuing any notice to the respondent would not arise as it would be an exercise in futility. Hence, without issuing notice to respondents on application for delay, I.A. No. 1/2012 is hereby dismissed. Consequently, appeal is also dismissed.