

(2023) 09 CAL CK 0002

In the Calcutta High Court

Case No : FMAT No. 136 Of 2021, CAN 1 Of 2023

Samsunnela Seikh And Ors.

APPELLANT

Vs

Oriental Insurance Co. Ltd. & Anr.

RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173, 173(1)

Citation : (2023) 09 CAL CK 0002

Hon'ble Judges : Ajay Kumar Gupta, J

Bench : Single Bench

Advocate : Krishanu Banik, Tattagata Banik, Parimal Kumar Pahari

Final Decision : Dismissed

Judgement

Ajay Kumar Gupta, J

1. This is an application for condonation of delay filed under Section 173(1) of the Motor Vehicles Act, 1988 seeking for condonation of delay of 3355 days (more than nine and half years) in preferring the first miscellaneous appeal against the judgment and order dated 15.09.2011 passed by the Learned Judge, Motor Accident Claims Tribunal, 5th Court, Burdwan in M.A.C.C. No. 58/308 of 2010/2010, whereby the learned Tribunal awarded a sum of Rs. 3,55,500/- along with simple interest @ 7 % per annum from the date of filing of the case i.e. 06.10.2010 till the date of its final payment under Section 166 of the Motor Vehicles Act, 1988.

2. Learned advocate appearing on behalf of the appellant submitted that the appeal could not be filed within the statutory period of limitation as the appellant was prevented by sufficient cause. He also referred the paragraphs 5, 6, 7, 8, 9, 10 and 11 of the application indicating the reasons for condonation of delay and finally prayed for condonation of delay taking an account of beneficial piece of legislation since the Act is enacted for the purpose of benefit of claimant, who suffers injury and death of his/her family members due to Motor Traffic Accident.

3. Before deciding the application, this Court would like to refer the Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act").

Section.173. Appeals.— (1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2.) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than [one lakh] rupees.

4. In view of the aforesaid provision, the appeal is to be filed within the period of limitation described under Section 173(1) of the Said Act within 90 days from the date of judgment and award. It further provides the High Court may entertain the appeal even if the expiry of the period of 90 days but it should be on satisfaction by the Court that the appellant was prevented by sufficient cause for preferring the appeal beyond the statutory period of limitation.

5. There must be sufficient and cogent ground for delay and that must be explained by the appellant in an application why such enormous delay was caused in filing the instant appeal. It is apparent from the Section itself that there is a power to condone the delay but condonation of delay can never be a mechanical and routine manner when the law provides limitation for preferring an appeal.

6. That proviso contemplates the power of discretion of the Court for condonation of delay. Even then, the discretionary power exercised judicially by recording the reasons. When there is an enormous delay of 3437 days a Court is bound to ascertain the sufficient cause and/or genuine reason or acceptable of such sufficient reason while considering the application for condonation of delay.

7. Learned Advocate pointed out that the delay was neither due to laches nor negligence on the part of the appellant. Appellants also referred several paragraphs of the application showing causes for not filing this appeal within the statutory period of limitation.

8. On the other hand, learned counsel appearing on behalf of the respondent No.1/Insurance Company strongly opposed the prayer and contended that such long delay cannot be condoned. If such delay condoned then the meaning of providing limitation under the Act is purposeless.

9. Having heard the submission of the parties and on perusal of the application,

it appears the appellant has tried to convince this Court by referring the paragraphs as mentioned for delay due to sufficient cause.

Appellant averred in the said application the following reasons, which are as follows:

(i) Appellant came to know about the fate of their claim case in the third week of December, 2011 i.e. on 20.12.2011.

(ii) Learned Advocate of the lower Court advised him on 20.12.2011 to prefer an appeal before High Court at Calcutta or alternatively to file review application before the learned Tribunal after obtaining certified copy of impugned judgment and award.

(iii) Appellant was facing a lot of financial problems due to death of sole bread earner of the family and had no time to meet his learned advocate since he was confined to his own family lives.

(iv) On 06.01.2016 appellant went to meet her learned advocate to express his desire to file an appeal against impugned judgement and award. Learned advocate asked him to meet learned advocate of this Hon'ble High Court at Calcutta. He met learned Advocate on 15.01.2016 in the High Court, who asked him to meet after few days.

(v) When he went to meet learned Advocate on 27.01.2016, he came to know learned Advocate went to Hyderabad for his treatment on 26.01.2016.

(vi) Learned Advocate went Hyderabad thereafter on several occasions for his treatment.

(vii) Covid-19 pandemic situation started from March, 2020 upto the end of September, 2021.

10. The reasons averred by the appellant in an application are insufficient and not acceptable owing to non-filing of any medical document of the learned advocate to substantiate his contention that learned advocate was ill from 26.01.2016 to February, 2020 (more than four years). Furthermore, date of judgment and knowledge about the fate of claim case are not in order as the date of knowledge written as 20.03.2011 whereas the judgment delivered on 12.05.2011. Reasons should be acceptable and valid one. Long delay cannot condone in a mechanical manner undoubtedly a short amount of delay can be condoned by taking a lenient view to consider the Act is enacted for the benefits of the claimant. However, long delay cannot be condoned in absence of valid, sufficient cause or reason. The appellant fails to explain the delay in his application. The reasons cited by the appellant are made in routine manner which definitely cannot be a ground for condonation for a long delay. Undisputable long delay cannot be condoned without sufficient cause.

11. Learned counsel for the appellant referred two judgments

(1) M/S. Tech Sharp Engineers Pvt... Ltd vs. Sanghvi Movers Limited reported in AIR 2022 SC 4402 and

(2) Ram Nath Sao @ Ram Nath Sahu And... Vs. Gobardhan Sao And Others reported in AIR 2022 SC 1201 to satisfy this Court that this Court has discretionary power to condone the long delay in an appeal filed under the said Act. Upon perusal of the judgments, this Court does not repose confidence to allow application for condonation of 3355 days delay in filing appeal as the first referred Judgment held in Paragraphs 28 and 29 as follows:

"28. The limitation for initiation of winding up proceedings in the Madras High Court stopped running on the date on which the Winding Up petition was filed. The initiation of proceedings in Madras High Court would not save limitation for initiation of proceedings for initiation of CIRP in the NCLT under Section 7 of the IBC.

29. A claim may not be barred by limitation. It is the remedy for realisation of the claim, which gets barred by limitation. The impugned order of the NCLAT is unsustainable in law."

In another judgment, the Hon'ble Supreme Court allowed the application for condonation of delay, as the case was abated as no steps for substitution of their heirs and legal representatives were taken within the time prescribed. If it would be rejected no substantial justice can be done. Furthermore, no enormous delay was apparent in the said case as appearing in this case. In addition, facts and circumstance of this case is totally different.

Those Judgments are not at all applicable in the case in hand. In the instant case there is enormous delay of 3355 days.

12. It is clear from the proviso to Section 173 of the Motor Vehicles Act, 1988, that the High Court may entertain the Appeal after expiry of the period of ninety days if it is satisfied that the Appellant was prevented by "sufficient cause" from preferring the Appeal in time. While explaining what "sufficient cause" entails, the Hon'ble Supreme Court in Basawaraj and another vs. Special Land Acquisition Officer (2013) 14 SCC 81 held as follows:

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground

to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336], *Mata Dinv. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953], *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629].)

10. In *Arjun Singh v. Mohindra Kumar* [AIR 1964 SC 993] this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201].)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 24, p. 181:

"330. Policy of the Limitation Acts. — The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a

defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510], *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705: AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448: (2009) 5 SCC (Civ) 907].)” [emphasis supplied]

13. The parameters discussed in the ratio of *Basawaraj and Another* (supra) in the context of “sufficient cause” is obviously not fulfilled in the instant case as it reveals from the grounds or causes set forth by the Appellant in an application for condonation of delay.

14. In addition, it appears from the aforesaid judgment and award that some compensation amount was awarded by the learned Tribunal. But whether the appellant/claimant has received the awarded amount or not? No any details date and even recording the date of deposit, withdrawal of awarded amount and other details were mentioned in the said application. In absence of such details, this Court would not able to gather the information whether the claimant would not receive any compensation amount from the insurance company. Thus, financial position of the appellant for filing appeal is also not brought on record.

15. Unreported Judgment dated 12th April, 2023 passed by co-ordinate Bench of this Court in COT 92 of 2022 with CAN 1 of 2023 (*Sajali Murmu & Anr. Vs. The Oriental Insurance Company Ltd. & Anr. With F.M.A. 57 of 2010 (The Oriental Insurance Company Ltd. vs. Sajali Murmu & Anr.)*) has referred by the appellant is also not endorsed the prayer of the appellant for condonation of such inordinate delay as the facts and circumstances of the instant case is wholly different from the referred case.

16. In the light of the above discussions, the application for condonation of delay being CAN No. 1 of 2023 is rejected and, thus disposed of.

17. Consequently, Appeal being FMAT No. 136 of 2021 also stands dismissed as barred by limitation. No order as to costs.

18. All connected applications, if any, also stand disposed of.

19. Let copy of this judgment and order along with Lower Court Records, if received, is sent down to the learned Tribunal for information.

20. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.