

(2008) 03 DEL CK 0218

In the Delhi High Court

Case No : CM No. 4407 of 2008 in Mac. App. No. 185 of 2008

Shri Mohan Lal Kanojia

APPELLANT

Vs

Shri S.K. Jain and Another

RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2008) 03 DEL CK 0218

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Jitender Kumar Dhingra, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—Assailing the impugned Award the appellant, who is the owner of the offending vehicle has preferred the present appeal. There is a delay of 228 days in filing the present appeal. The appellant has moved the present application u/s 5 of the Limitation Act read with Section 151 CPC praying for the delay of 228 days to be condoned.

2. Mr. Jitender Kumar Dhingra counsel appearing for the appellant contends that it is only on account of the lapse and misconduct of the counsel, who was representing the appellant before the learned Tribunal that the case of the appellant was not properly placed before the Tribunal. The contention of the counsel for the appellant that the appellant had filed the written statement in reply to the claim petition filed by the claimants, but he was never advised to appear before the Tribunal by his Advocate and nor he was ever intimated about the outcome of the compensation case filed by the claimants. Counsel for the appellant further states that the appellant was not aware of any order of the Tribunal whereby he was directed to remain present for the purpose of making statement under Order 10 CPC and, therefore, the appellant cannot be blamed

for his non-appearance before the Tribunal which led to striking of his defence vide order dated 6.5.2002. Counsel for the appellant further contends that the appellant was never communicated about the passing of the Award dated 13.4.2002 whereby the recovery rights have been given to the insurer of the offending vehicle to recover the entire Award amount along with interest from the owner of the offending vehicle i.e. the appellant herein. It is only on 11.2.2008 the appellant came to the Court and verified from the Court staff and then only he came to know about the filing of the execution petition by the insurance company against the appellant wherein the next date was fixed as 20.2.2008. Counsel further contends that the pendency of the said execution petition came to the knowledge of the appellant when a neighbour of the locality had informed the appellant that summons from the MACT Tribunal were brought by some Court staff, who was asking about the whereabouts of the appellant. After having come to know about the said fact the appellant made an attempt to contact his previous lawyer Shri Madan Lal Gupta, but since he was avoiding to meet the appellant, therefore, the appellant came to the Court on 11.2.2008 and thereafter took steps to apply for the certified copy of the impugned order dated 13.4.2007. The appellant had applied for obtaining the certified copy of the Award on 21.2.2008 and had engaged the new counsel for the purposes of preferring an appeal before the Hon"ble High Court. The appellant went through the order sheet of the Court as supplied to him and then came to know that his previous counsel Shri Madan Lal Gupta had lastly appeared before the MACT Judge on 7.3.2002. The appellant also came to know about the striking of his defence by the Tribunal vide orders dated 6.5.2002. Counsel for the appellant thus contends that due to the sheer negligence and lapse on the part of his previous counsel the appellant should not be made to suffer. Counsel for the appellant further contends that the appellant has very strong case on merits and therefore, delay in filing the appeal be condoned. In support of his arguments counsel for the appellant has also placed reliance on the judgment reported in N. Balakrishnan Vs. M. Krishnamurthy, ; Prahlad Chandra Dey Vs. Assam Board of Revenue at Gauhati and Another and Sushila Narahari and Others Vs. Nandakumar and Another,

3. I have heard counsel for the appellant and have perused the record.

4. It is not in dispute that the appellant is the owner of the offending vehicle and is a necessary party in a claim petition filed under the Motor Vehicles Act. It is not the case of the appellant that he was never served with the summons of the compensation case filed by the claimants and was thus proceeded ex parte. The appellant had duly authorized and had appointed the counsel to represent his case before the Tribunal. The written statement was also filed by the said Advocate. After filing of the said written statement directions were given to the appellant for his personal appearance for the purpose of recording his statement under Order 10 CPC. Directions to this effect were given by the Tribunal vide orders dated 8.10.2001 and the matter was adjourned for 15.10.2001. On 15.10.2001 counsel for respondent No. 2 was present and adjournment was

allowed to respondent No. 2, subject to payment of costs of Rs. 500/- and it was made clear to the counsel representing respondent No. 2 that the defence of respondent No. 2 would be struck off on the failure of respondent No. 2 to appear before the Tribunal on the next date. Personal presence of respondent No. 2 was primarily sought by the Tribunal as the appellant/respondent No. 2 had failed to disclose the name of the driver in the written statement filed by him. On the next date the costs as imposed on respondent No. 2 was paid by his counsel, but since he was not present despite directions given by the Tribunal further costs of Rs. 500/- was imposed upon him while granting another opportunity to appear in the Court. It was again made clear that the defence of respondent No. 2 would be struck off in the event of his non-appearance on the next date. Matter was adjourned for 6.5.2002 for the said purpose. On 6.5.2002 again respondent No. 2 did not appear and even the counsel for respondent No. 2 absented himself, which led to passing of the order of striking of defence by the Court of the appellant. The same matter before the Tribunal remain pending till 13.4.2007 when finally the Award was pronounced. It would be thus manifest that the appellant after giving authorization to his Advocate and after filing his written statement never ever contacted his counsel so as to know about the day to day proceedings of the Court including the final result of the compensation case. It is very easy to put a blame on the counsel for negligence and lapse, but what about the negligence of the appellant himself, who remain so complacent and reckless in properly and effectively contesting the said case. In the present application the appellant is stated to have gained knowledge of the pendency of the execution proceedings from one neighbour of the locality, but has failed to disclose the name of such neighbour and even the date when he came into contact with such a neighbour. The appellant has stated that he knew the neighbour from the time when he was earlier residing at Janakpuri, but nondisclosure of his name and the date of his alleged meeting with the neighbour certainly does not inspire any confidence. It is a matter of common knowledge that in all those cases where there is insurance of the offending vehicle, owners generally do not contest the compensation cases seriously on the assumption that liability to pay the Award amount would necessarily fall upon the insurer of the vehicle alone without realizing that in a case where insurance company succeeds to establish any one of the defence as available to it u/s 149(2) of the Motor Vehicles Act then the liability can also fall on such owners of the offending vehicles. In all such cases where the insurance company files execution petitions so as to recover the Award amount, the owner suddenly wakes up and then starts blaming the lawyers for not properly conducting the matter on their behalf. In any event of the matter in the absence of any communication or misrepresentation made by the counsel, this Court cannot subscribe to this view that a party against whom the case has been filed and who has authorized his Advocate to appear on his behalf would not even try to know the fate of his case during the entire period w.e.f. 8.10.2001 till 11th February, 2007. The judgments cited by the appellant in support of his submissions are not applicable in view of the facts of the present case.

5. Section 5 of the Limitation Act, 1963 extends prescribed period of limitation in filing an application or an appeal except under the provisions of Order 21 of Civil Procedure Code, 1908 and gives power to the court to admit the appeal or application after the prescribed period, the only condition being that the applicant/appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. The discretion given by Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The true guide for a court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In the instant case, the applicant did not approach the court with clean hands, therefore, this Court cannot exercise its power u/s 5 as the same would not subserve the ends of justice.

6. There is no merit in the application. The same is dismissed.

7. In view of the dismissal of condonation of delay application the present appeal does not sustain and the same is hereby dismissed.