

(1973) 11 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : C.M.P. No. 277 of 1973 in F.A.O. No. 28 of 1973

State of Himachal Pradesh

APPELLANT

Vs

Budhi Singh

RESPONDENT

Date of Decision : 07-11-1973

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1939 — Section 110D

Citation : (1973) 2 ILR HP 1087

Hon'ble Judges : R.S. Pathak, C.J.;Chet Ram Thakur, J

Bench : Division Bench

Advocate : B. Sita Ram, General, for the Appellant; S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This is an application for condonation of delay in filing an appeal u/s 110-D, Motor Vehicles Act, 1939.

2. The Motor Accidents Claims Tribunal made its award on October 3, 1972. The award was made against the Himachal Government Transport, Chamba. With a view to preferring an appeal against the award the Himachal Government Transport, Chamba, applied for a certified copy of the award on October 10, 1972. A second application, which was numbered 665, for a certified copy of the award, was made on December 22, 1972. Consequent upon the second application, a certified copy of the award was prepared on February 17, 1973, and delivered on the same date. There is some controversy as to what happened to the first application. The register of the Copying Agency, which was summoned by us, contains an entry that the application was returned on February 13, 1973. The memorandum of appeal filed in this Court was accompanied by the certified copy of the award obtained on the second application. There is no dispute as to that. That certified copy bears an endorsement showing that it was prepared consequent to application number 665, made on December 22, 1972, and that it

was ready and delivered on February 17, 1973. If the period of limitation for the appeal is computed by reference to the time taken in preparing this certified copy, then admittedly it expired on March 1, 1973. The appeal was filed on April 5, 1973. As it appeared to be barred by time it was returned to the learned Advocate-General for filing it along with an application for condonation of delay. The appeal was refiled with such an application on May 7, 1973.

3. Successive affidavits have been filed before us in the attempt to explain the delay and to show that the appeal should be treated as being within time. But it appears that with each affidavit an attempt has been made to improve upon the case disclosed by the preceding affidavits and yet the curious result has been to create a pervading inconsistency between the different affidavits. As the several affidavits are read one after the other, it would seem that no serious attempt has been made by the Appellant to ascertain the exact facts and to determine the true course of events concerning the applications for the certified copies. The investigation of the facts appears to have been conducted in a perfunctory and haphazard manner, the averments in the affidavits changing their course with each shifting wind. That is a serious matter especially as the affidavits filed before us purport to have been sworn to the knowledge of the deponent, and the deponent should be presumed to have known when swearing the affidavits that he was exposing himself to the possibility of criminal proceedings besides involving the rejection of the application for condonation of delay and, therefore, the dismissal of the appeal.

4. The responsibility of a person swearing an affidavit is a serious one, and never more so than when he seeks the indulgence of the court for a benefit which the law would otherwise deny him. Upon an application for condonation of delay, it is of the greatest importance that the facts deposed to in the supporting affidavit should be fully set out and with scrupulous accuracy. An appeal to the court's judicial discretion must be firmly founded in those principles of equity which time and the practice of courts have long since hallowed, not the least of which is that he who comes into equity must come with clean hands.

5. There are as many as nine affidavits before us, and they may now be examined.

6. The first affidavit of Shri P.D. Abrol, Regional Manager of the Appellant Himachal Government Transport, states that the application for a certified copy of the award was made on October 11, 1972, and that the requisite certified copy was received on February 17, 1973. The fact that two applications were made for certified copies of the award was not disclosed, and the impression given by the affidavit is that the certified copy received on February 17, 1973, was prepared pursuant to the application made in October, 1972. It is a false impression, and had the true facts remained undisclosed it would have enabled the Appellant to contend that in fact there was no delay in filing the appeal because the time taken in obtaining the certified copy of the award was sufficient to entitle the appeal, when filed, to be treated as an appeal within time. The

averments in that affidavit having been questioned, a second affidavit dated May 30, 1973, was filed claiming that documentary proof in support of the averment that the application for certified copy of the award was made on October 11, 1972, and that the copy was supplied on February 17, 1973, was available in the office of the Regional Manager, Himachal Government Transport, Chamba, but that on account of a fire which had broken out in that office on April 13, 1973, the entire record had been destroyed. It is apparent that the truth emerging from the endorsement on the certified copy of the award filed with the memorandum of appeal, namely, that the certified copy had been prepared pursuant to the application dated December 22, 1972, and not to the application filed in October, 1972, was either ignored or attempted to be covered up.

7. When the contents of that endorsement were brought to the attention of the learned Advocate-General, two more affidavits were filed. There was an affidavit dated July 21, 1973 of Shri P.D. Abrol, which repeated verbatim the contents of the second affidavit dated May 30, 1973. It was a meaningless affidavit when the earlier affidavit was already on the record. The fourth affidavit was dated July 30, 1973, and was deposed to by Shri S.P. Barotra, District Attorney, Chamba district. He averred that on October 6, 1972, he instructed the Regional Manager of the Appellant to apply for a certified copy of the award, that on March 21, 1973, the Regional Manager sent him the said certified copy, and that on March 26, 1973, he forwarded his opinion for filing an appeal along with the draft memorandum of appeal and the certified copy to the Regional Manager. It is difficult to see how this affidavit carries the case of the Appellant any further.

8. In the submissions made before us by the learned Advocate-General it was contended that the endorsement contained in the certified copy of the award accompanying the memorandum of appeal was incorrect and the certified copy was in fact obtained upon the application made in October, 1972. To clear the position this Court summoned the relevant record of the Copying Agency. Upon a perusal of the record it appeared that an application had in fact been made for a certified copy of the award on December 22, 1972. As the impression conveyed by the affidavits filed so far was that an application had been made on October 11, 1972, and consequent thereto a certified copy was obtained on February 17, 1973, a position which was inconsistent with the entries contained in the Copying Agency record and the endorsement contained in the certified copy accompanying the memorandum of appeal, the learned Advocate-General was allowed time to file a further affidavit to clarify the position.

9. Some weeks later a fifth affidavit was filed. An affidavit dated September 12, 1973, by Shri P.D. Abrol now stated that an application for a certified copy of the award was made by the Assistant District Attorney on October 11, 1972, and a second application was made by Shri Abrol himself on December 22, 1972, "by way of reminder to an application filed through the Assistant District Attorney, Dharamsala on 11-10-1972." Now, if Shri P.D. Abrol, had himself made a second application on December 22, 1972, be it by way of a reminder or not, that fact

was known to him and should have been disclosed in the affidavits already filed. The impression which emerges is that the fact was concealed by him in order to sustain the contention that the appeal was within time. Instead of attempting to explain how the omission to state that fact occurred, Shri Abrol on the contrary attempted by this further affidavit to justify the facts alleged in his earlier affidavits by stating that the date December 22, 1972, mentioned in the endorsement contained in the certified copy filed with the appeal was wrong, and that it should have been October 11, 1972, on which the first application had been made. The explanation served up that the second application made on December 22, 1972, was only by way of reminder and in continuation of the previous application cannot be accepted for a moment. There is nothing on that application, a certified copy of which is before us, to indicate that it was of that character. The entries in that application show that it was a distinct application from the first application. The other affidavit filed at this stage, is that of Shri Hardev Singh, Assistant District Attorney, Kangra at Dharamsala and is dated September 13, 1973. It stated that the award was announced by the Motor Accident Claims Tribunal, Dharamsala, on October 3, 1972 at Dharamsala, and that Shri Hardev Singh applied to the Tribunal for a certified copy of the award on October 9, 1972, but no copy consequent to that application had been received by him until now.

10. The case was again heard by us on September 14, 1973, and it appeared clearly that the explanation tendered so far by the Appellant was wholly insufficient for explaining the delay. The application for condonation of delay could have been dismissed forthwith, but the learned Advocate-General requested for further time for filing a fuller affidavit in explanation of the delay with all original documents necessary for disposing of the matter. Repeated opportunities had already been given to the Appellant to explain the delay and the case had come up before the Court on several occasions, and affidavit after affidavit had been filed, but in order that justice should be fully served the Court made an order granting one last opportunity to the Appellant to explain the delay. Three affidavits were now filed. Two affidavits were deposed to by Shri Hardev Singh, Assistant District Attorney, Kangra at Dharamsala. One of them, dated September 13, 1973, averred that the award was announced by the Motor Accident Claims Tribunal on October 3, 1972, at Dharamsala and that Shri Hardev Singh applied for a certified copy of the award on October 9, 1972, but the copy had not been received by him until now. The other affidavit, dated September 18, 1973, stated in addition that the application made by Shri Hardev Singh on October 9, 1972, had not been returned to his office so far. Apparently, the Appellant by those two affidavits, attempted to prove that the entry in the register of the Copying-Agency showing the return of the application made in October, 1972 was incorrect. Another affidavit, dated September 19, 1973, and sworn by Chandu Ram, Clerk in the office of the Commissioner of Transport, Simla, stated that the certified copy of the award along with the opinion of the District Attorney, Chamba district, dated March 26, 1973, was received in that

office on March 31, 1973, that the papers were placed before the Advocate General the next day and the Advocate-General approved the grounds of appeal prepared by the District Attorney and also prepared an application and an affidavit for stay of the operation of the award, that the affidavit was signed and attested on April 3, 1973, and the appeal was filed the very next day in this Court. It was also averred that upon the objections raised by the office of this Court the appeal was returned to the learned Advocate-General and was re-filed after removing the objections on May 5, 1973, the intervening period having been employed in the Transport Commissioner's Office in sending telegrams to the Regional Manager, Himachal Government Transport, Chamba, and in contacting him on the telephone for an affidavit to explain the delay in filing the appeal.

11. The last affidavit, also of Chandu Ram, dated September 18, 1973, while reiterating some of the earlier allegations, merely added that upon enquiry made by the learned Advocate-General by telephone the Assistant District Attorney, Dharamsala, had stated that the application made in October, 1972 had not been returned to him so far.

12. In our opinion, the nine affidavits before us lamentably fail to make out any case for condoning the delay in filing the present appeal.

13. The endorsement on the certified copy of the Award filed with the memorandum of appeal clearly deposes that it was prepared pursuant to an application dated December 22, 1972, and that it was delivered on February 17, 1973. From these entries in the endorsement, no other conclusion was possible but that the limitation for filing the appeal expired on March 1, 1973. And yet the appeal was not filed until April 4, 1973.

14. The learned Advocate-General contends that the limitation in filing the appeal should be computed on the basis that the certified copy of the award with the memorandum of appeal was prepared consequent to the first application of October, 1972. There is no material to justify that assumption. There is not a little of evidence to relate it to the earlier application of October, 1972.

15. It is contended that the application made on December 22, 1972, was by way of reminder to the earlier application and in continuation of it. There is nothing on the record before us to warrant that assumption either. Two distinct applications were made, each for a certified copy of the award. Then, it is urged that the Copying Agency had been negligent in preparing a certified copy pursuant to the first application of October, 1972 and in order to cover up its negligence it prepared the certified copy on the basis of the second application of December 22, 1972, and made an entry in the register that the first application had been returned. Here again, there is no material whatever in support of the allegation. Besides, even upon this contention the fact remains that the copy was prepared upon the second application and limitation has to be computed accordingly. The period of limitation extended upto March 1, 1973. The appeal

could have been filed by that date. There is no ground for supposing that it could not. The certified copy was delivered apparently to the Regional Manager, Himachal Government Transport, Chamba, and he did not send it to the District Attorney, Chamba District until March 21, 1973. There is no explanation for the delay. Upon an overall assessment, the impression conveyed by the record is that the matter of filing the appeal was treated with a regrettable casualness. And, instead of setting out the facts truly and fully at the very outset before this Court, an attempt was made to link the certified copy filed with the appeal to the application of October, 1972 while omitting reference to the application made on December 22, 1972.

16. Section 110-D of the Motor Vehicles Act, 1939, prescribes the period of limitation for appealing against an award of a Claims Tribunal, and it empowers the High Court to entertain the appeal after expiry of that period "if it is satisfied that the Appellant was prevented by sufficient cause from preferring the appeal in time". The language is reminiscent of Section 5 of the Indian Limitation Act. The court is armed with a judicial discretion in the matter. As long ago as *Brij Index Singh v. Lala Kanshi Ram* AIR 1917 PC 156, the Privy Council observed, approving the observations of Plowden, J. in *Karm Bakhsh v. Daulat Ram* 183 PR 1888 that "the true guide for a court in the exercise of this discretion is whether the Appellant has acted with reasonable diligence in prosecuting his appeal...." It must not be forgotten that two opposing considerations which need to be balanced when the Court exercises its judicial discretion in the matter are, on the one hand the circumstance that the expiration of the period of limitation prescribed for preferring an appeal gives rise to a right in favour of a decree holder to treat the decree as binding between the parties and that this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed and on the other that if sufficient cause for excusing the delay is shown the court should condone the delay and admit the appeal. That was pointed out by the Supreme Court in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, No doubt the Supreme Court also observed that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice, but this was made subject to the proviso that "no negligence nor inaction nor want of bona fide is imputable to the Appellant". That view was reiterated by the Supreme Court in *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*,

17. An attempt was made by the learned Advocate General to draw a distinction between a delayed appeal filed by the Government and a delayed appeal filed by a private party, and it was urged on the basis of *State of Himachal Pradesh v. Sudarshan Singh Saini* 1971 SLJ 370 (H.C.), that the Court should look with greater indulgence on the delay occasioned in the Government filing an appeal. We do not think that that is what the case lays down. If the observations in that case on which reliance is placed can be said to lay down that greater indulgence should be shown to the Government, they would conflict with what the Supreme Court declared in *The State of West Bengal* (supra), where it said:

Mr. D. Mukherji, learned Counsel for the first Respondent, is certainly well founded in his contention that the expression "sufficient cause" cannot be construed too liberally, merely because the party in default is the Government. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction.

The Punjab High Court in *Union of India (UOI) and Another Vs. Shree Ram Kanwar and Others*, declared that the law of limitation operates equally in the case of the Government and a private individual, and on special indulgence could be shown to the Government. It may be, as was observed in *K.R. Beri and Co. and Others Vs. Employees State Insurance Corporation*, that because of the complexity of the Government machinery the decision to file an appeal may take a longer time for processing than in the case of an individual, but nonetheless the processing must be conducted with due diligence and not negligently. The prescribed period of limitation remains the same and the only question in each case is whether the Appellant, be it the Government or a private individual, has acted with reasonable diligence. It is in this light that the observations of this Court in *State of Himachal Pradesh (supra)* should be understood.

18. It is important to bear in mind that when an important right has accrued to the Respondent by lapse of time the Court should extend the period of limitation only on good cause shown and not merely out of benevolence to the Appellant. In *Pandit Krishna Rao Daitatraya Phalke v. Trimbak* AIR 1938 Nag. 156, the Nagpur High Court said precisely that when it observed:

When the time for filing the appeal has once passed, a very valuable right is secured to the successful litigant and the court must, therefore, be fully satisfied of the justice of the grounds on which the Appellant seeks to obtain an extension of time for attacking the decree and thus perhaps depriving the successful litigant of the advantages which he has obtained.... The period for preferring an appeal cannot be extended simply because the Appellant's case is hard and calls for sympathy, nor will the court extend the period of limitation merely out of benevolence to the party seeking relief. A court in granting the indulgence must be satisfied that there was diligence on the part of the Appellant and that he was not guilty of any negligence whatsoever....

It is well settled that when the limitation has expired the delay must be explained in respect of each day thereafter until the appeal is filed. In the present case the Appellant has failed to explain the delay. There has been gross negligence and carelessness, and no case has been made out for condoning the delay in filing the appeal.

19. Accordingly, the application is dismissed.

Order of The Court.

20. The facts have been detailed in our order of date in C.M.P. No. 277 of 1973

for condonation of delay in filing the appeal. That application having been dismissed, this appeal is dismissed as barred by limitation. The Respondents are entitled to their costs.