

(2010) 08 MAD CK 0126

In the Madras High Court

Case No : C.R.P. NPD No. 2830 of 2010 and M.P. No. 1 of 2010

United India Insurance Co. Ltd.

APPELLANT

Vs

Saroja, Thangamani, Sasikumar and Chinnamani (Sasikumar and Chinnamani rep. by their Mother and Next Friend Saroja)

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2010) 08 MAD CK 0126

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; M. Aniruthran, for the Respondent

Final Decision : Allowed

Judgement

B. Rajendran, J.—The Civil Revision Petition is against setting aside the order of dismissal made in I.A. No. 370 of 2009. The application is

filed to condone the delay of 929 days in preferring the application to set aside ex parte decree dated 14.11.2006 passed against the

petitioner/second respondent. In the affidavit filed in support of the petitioner, the petitioner would content that earlier the MCOP itself was

dismissed for default. The papers were mixed with old records and it could not be traced and subsequently when the petition was restored, they

did not have the knowledge as the records were misplaced with other records. They came to know about the decree only much later. Therefore,

there has crept in a delay of 929 days in preferring the appeal. The application is filed u/s 5 of the Limitation Act. The respondent has specifically

pleaded in the affidavit that as early as on 31.01.2005, the MCOP itself was dismissed for default. Therefore the respondent claimed to have filed

in IA No. 385 of 2006 and 386 of 2006 for condoning the delay and restoring the petition which was dismissed for default. But that applications were allowed without notice to the petitioner. Therefore they were not aware of the restoration and subsequently the petition itself was decreed ex parte on 14.11.2006. Since they did not have knowledge about the restoration there has crept in delay to set aside the ex parte decree. But the respondent would contend that in the application in I.A. No. 385 of 2006 and 386 of 2006 for restoration and condonation of delay, notice was issued to the petitioner and it was served but since he did not appear later on, the MCOP was decreed ex parte on 14.11.2006 and they would also further contend that even thereafter on 01.02.08, they filed an E.P. Application and in the E.P also notice was served and after nine hearings only, the present application has been filed. Therefore the condone delay application should not be allowed and it was rightly rejected by the Court below.

2. Heard both the parties.

3. The short point for consideration in the CRP is whether the revision petitioner has satisfied the Court for the condonation of delay of 929 days?

4. The main ground of attack of the Insurance company was that the earlier MCOP itself was dismissed for default. Subsequently it was restored

to file on the application filed by the respondent claimant in application No. 385 and 386 of 2006 namely the petition to condone the delay and

restoring the petition dismissed for default. Their only contention was that the said applications were not served.

5. The learned Counsel would point out that even the tribunal has categorically stated in the present application itself that in respect of application in

IA No. 385 and 386 of 2006, notice itself was dispensed with. Therefore before restoration, no notice was admittedly sent to the Insurance

company and it was restored without any notice to the insurance company. Therefore when it was restored without notice to the respondent

company, it is quite natural that the insurance company could not have contested the matter that they were under the impression that the petition

was dismissed for default long back. Subsequently they had come to knowledge of the very ex parte decree much later when the EP was filed,

notice was sent and only through notice they have come across the restoration

and condonation and therefore they have filed the present application with the condonation of 992 days. Apart from this, the learned Counsel also brought to the notice of this Court that in respect of earlier application filed by the very same party under the Workmen's Compensation Act in W.C. No. 58 of 1998 before the Dy. Commissioner of Labour, Salem and that was ultimately dismissed on the ground that he is not a worker as contemplated under the Act as early as on 28.03.1999 and thereafter only the present MCOP itself has been filed much later in the year 2003 but this information was not available at that point when the matter was taken up. Therefore a new information has come to the knowledge of the Insurance company which is also been brought to the notice of this court. Therefore under the change in the circumstances in respect of the claim made by the claimant, then necessarily this application has got to be allowed so that it will give an opportunity for them to put on trial for both the parties to whether still the respondent/claimant is entitled to compensation under the Motor Vehicles Act.

6. As far as the condonation of delay is concerned, the learned Counsel for the petitioner relied upon a decision of Supreme Court reported in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, and the relevant portion is extracted hereunder-

15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

7. Further, he also relied upon a decision reported in Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, and Para 2 of the said judgment is extracted hereunder-

2. It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day-to-day

delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned.

8. He has brought to the notice of this Court a decision reported in 2009 (2) TN MAC 209 wherein the learned Judge of this Hon"ble Court has held explaining the sufficient cause for condonation of delay in fact it is stated that sufficient cause for condonation of delay should receive liberal construction in rendering justice. The relevant portion of the judgment is extracted as follows-

15. It appears from the various decisions of the Honourable Supreme Court and the Honourable High Court, no hard and fast rule can be laid while considering the Application for condoning the delay, whether u/s 5 of the Limitation Act or under Sub-section (1) of Section 173 of the Motor Vehicles Act, but it has to be seen only whether "sufficient cause" is shown for condoning the delay. As "sufficient cause" is not defined, to decide whether the explanation offered for the delay constitutes sufficient cause, it depends upon facts and circumstances of each case. It should be understood from the decision of the Honourable Supreme Court that the expression "sufficient cause" for condoning the delay should receive a liberal construction in rendering justice. This Court is also to keep in mind, the consequences by shutting the doors of adjudicatory jurisdiction to

the party even before entering. The pristine maxim *Vigilantibus non dormientibus jura subveniunt*" which means law assists those who are vigilant

and not those who sleep over their rights". The litigant of either side are, prone to commit mistakes. It becomes necessary to seek whether it is

possible to entertain grievance, if it is genuine. Of course, the law of limitation is same for private citizen as for Governmental affairs. When the

claimants-affects party come for an Appeal with the considerable delay and this Court is to make a liberal approach, nothing wrong in giving same

approach for the parties against whom the award is passed, as the Doctrine of equality before law demands all the litigants including the State to be

accorded the same treatment. As observed by the Honourable Supreme Court, the expression "sufficient cause" therefore be considered with

pragmatic in justice oriented approach rather than the technical deduction of sufficient cause for explanation of every day delay.

9. The learned Counsel also brought to the notice of this Court a Division Bench decision of this Hon"ble Court reported in (2008) 4 MU 1038

wherein condonation of delay of 993 days in filing application to set aside ex parte order where also sufficient cause and bonafide were discussed

in detail. The useful portion is extracted thus-

16. As a matter of fact, the term ""sufficient cause"" should receive a liberal interpretation in the hands of law Courts. A pedantic approach should

not be made and on the other hand, a pragmatic approach should be made by the Courts of law in the justice delivery system. Admittedly, refusing

to condone the delay will certainly result in a good case being thrown out at the early stage 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 litigants. After all, a party does not

stand to benefit by resorting to delay. Per contra, he runs a serious risk. It is to be noted that when substantial justice and technical considerations

are pitted against each other, cause of substantial justice deserves to be preferred, in our considered opinion. Furthermore, it must be borne in

mind that judiciary is respected because it is capable of removing injustice on technical grounds.

10. All the above rulings will clearly indicate that when there is sufficient cause given by the revision petitioner, especially when it is brought to the

notice of this Court that suppression of an earlier dismissal order, it is a fit case that the delay has to be condoned.

11. It is also brought to the notice of this Court that pursuant to the decree that as per the direction in the EP, the entire amount of Rs. 4,29,462/-

has been deposited to the credit of MCOP No. 877 of 2003. As per earlier order, the same was not permitted to be withdrawn till 30.08.2010.

12. In view of the final order itself has been passed and the condonation of delay is allowed, the trial court will not issue the cheque till the disposal

of the main MCOP. It is further made clear that another CRP is filed for setting aside the order passed in the consequential order passed in the

Order 9 Rule 13 application. Therefore, the lower court is directed to dispose of the main MCOP itself within a period of two months from the

date of receipt of a copy of this Order. It is further stated that both the parties shall co-operate for the early disposal of the MCOP itself taking into

consideration that the MCOP is of the year 2003 and accident is of the year 1999.

13. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.