

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CONC No. 83/2018

Reserved on: 21.02.2023

Announced on: 27.02.2023

Pooja Devi & Ors.

...Applicant (s)

Through: Mr.Nigam Mehta, Advocate vice
Mr. Raghu Mehta, Advocate

Vs.

Tarseem Lal & Ors.

...Respondent(s)

Through: Mr.Deepak Mahajan, Advocate for R-2 .
Mr. S.Baldev Singh, Adovcate for R-3

CORAM: HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE

JUDGMENT

1. By medium of this application the applicants/appellants seek the indulgence of this Court in condoning the delay of 963 days in filing the Civil Ist Miscellaneous Appeal (CIMA), against the Award dated 30.05.2015 passed by Motor Accidents Claims Tribunal (District Judge) Samba in claim petition No. 97/2010 titled '*Pooja Devi & Ors. Vs. Tarseem Lal & Ors*', on the ground(s) that the counsel of the applicant/appellants did not inform the applicant-appellants herein about the passing of the impugned award; that the applicants only came to know about the passing of the impugned judgment few days back; that, thereafter applicants immediately got the certified copy of the judgment and contacted a counsel at Jammu who opined about the filing of appeal and thereafter the present appeal has been filed and thus the above referred delay is neither intentional nor deliberate but for the reasons

stated above which was beyond the control of the applicants, therefore, seeks condoning the delay of 963 days in filing the present appeal.

2. Pursuant to notices, respondents No. 1 chose not to respond, whereas respondent No. 3 filed objections which were also adopted by respondent No. 2. The contesting respondents opposed the plea, for condonation of delay in filing appeal, pleading that as per law the period of limitation for filing appeal under Motor Vehicles Act is 90 days. There is huge delay in filing the appeal. Rest of the contents regarding period of filing the appeal is matter of record. It is further submitted that the counsel engaged before the trial tribunal is known for his efficiency hence levelling allegation on the counsel without naming him and further no legal action taken against him, the ground taken has no value. The petitioners have nowhere mentioned as to when they had withdrawn the awarded amount from the trial Tribunal. It is settled law that the court cannot come to aid and rescue of litigant where application for condonation does not spell out sufficient cause and the approach of petitioners, in making such application in casual and cryptic manner.

3. Heard learned counsel for the parties, perused the record and considered the matter.

4. At the very outset, what requires to be stated is that it cannot be disputed that the 'Law of Limitation' has to be applied with all its vigor and rigor as prescribed by the Statute. One cannot escape the consequences of the provisions of the 'Law of Limitation' which provide that for the extension of the period of limitation in a given case, the condition precedent is that the applicants have to satisfy the Court that they have carved out a sufficient cause in seeking the indulgence of

the Court for not preferring the appeal or application within the stipulated time. The Courts cannot come to the aid and rescue of the litigant where the application for condonation of delay does not spell out sufficient cause and the approach of the litigant, in making such application, is casual and cryptic. Law on the subject is no more *res integra*.

5. In the case ***P.K. Ramachandran v. State of Kerala***, reported in AIR

1998 SC 2276, the Apex Court, at paragraph 6 ruled as under:

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.”

6. The Hon’ble Supreme Court, in a case ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors*** reported as **“(2013) 12 SCC 649”**, while dealing with the issue of condonation of delay, has broadly culled out principles in para no. 21, of which relevant are as under:

“21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.9. (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.12. (xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
 21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22.1 (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

It has been further observed in para 31 OF the judgment as follows:

31. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice.”

7. A Single Bench of this court while dealing with a similar plea regarding alleged negligence of counsel, seeking condoning the delay of 537 days in a case titled *Tariq Ahmad Mir Vs. Shahid Mushtaq Padroo & Anr (2018) Accidents Compensation Reports 711 (J&K)* held in para 11 as follows:

“Looking at the application of the applicant from another angle, the only exception that he has taken in the application in carving out a case in his favour is that his counsel did not inform him about the passing of the Award. The law is that a party has to be vigilant in the Court proceedings. It is the duty and responsibility of the party/s to contact his/her lawyer on every date. One cannot pass the buck on to the lawyer and state that he/she was remiss and negligent in not attending the Court on the appointed date. The applicant has been callous in prosecuting his case and he has knocked at the doors of the Court after a great deal of time. The power of attorney by which the applicant authorized his counsel to represent him before the Court reads that ;

I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said cause in consequence of his absence from the Court when the said cause is called up for and I/We hereby agree that in the event of the whole or part the payment to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said cause until the same is paid ;

On the face of this clause, it was the duty and responsibility of the applicant to get himself acquainted with the dates fixed in the matter and

apprise his counsel accordingly and the lawyer cannot be held accountable for the consequences that may arise. Even if assumed for the sake of arguments that the negligence of the counsel may give a cause to his client to project and advance an argument that his counsel was remiss and callous in discharging his obligation towards him, it cannot stretch till infinity. There is a delay of 537 days in filing the appeal and the applicant has filed the application after rising from a deep slumber. During this period, he did not, at all, take pains to enquire about the fate of his case.

8. Applicants have, mainly, based the application on the ground that their counsel had not informed them about the passing of the Award, in their favour. The application seeking condonation of delay does not spell out clearly as to the date, when applicants got knowledge of the Award and also no justifiable cause has been pleaded. Applying the ratio of the law discussed herein above and adverting to the factual background of the instant case, there has been a huge delay of 963 days in filing the appeal and no satisfactory explanation has come forward on that count except for routine words and phrases. No doubt, a liberal approach has to be adopted in the matter of condonation of delay when there is no gross negligence or deliberate inaction or lack of bonafides on the part of the litigant, but in the instant case, the applicants/ appellants took their own time to formulate an opinion that the appeal has to be filed. It has, nowhere, been stated that they were, at all, prevented earlier to take such a decision.

9. The applicants/ appellants have been negligent in prosecuting their case within time and the explanation offered about the negligence of their counsel for the delay in filing the appeal is neither plausible nor reasonable. The application appears to have been drafted recklessly without giving a proper account of the dates and details of

the grounds agitated in it and recourse has been had to the leisure and pleasure in moving the application. Blaming their counsel by the applicants, in the considered opinion of this court for a huge delay of 963 days, is of no help to condone this reckless delay. Applicants as against the contention of the respondent/insurer that applicants/claimants had also received awarded amount have remained silent, which means that while receiving awarded compensation they had knowledge about passing of the impugned award. Now they cannot turn around and be allowed to plead ignorance about the passing of the award.

10. In the above background, I am of the considered opinion that the applicants/ appellants have failed to explain the sufficient cause for condonation of huge delay of 963 days in filing the appeal. Consequently, the instant application for condonation of delay for want of any sufficient cause is *dismissed*. No costs.

**(MA CHOWDHARY)
JUDGE**

Jammu
27.02.2023
Mujtaba