

Sanjeev Verma @ Sanju Parihar vs The New India Assurance Company Limited ... on 31 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14608

Court No. - 36

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 69 of 2025

Appellant :- Sanjeev Verma @ Sanju Parihar

Respondent :- The New India Assurance Company Limited And 3 Others

Counsel for Appellant :- Kripa Shanker Mishra

Hon'ble Kshitij Shailendra,J.

1. The appeal is reported to be beyond time by 2520 days.
2. The ground seeking condonation of delay is that against the award dated 13.10.2017 the insurance company had preferred an appeal being F.A.F.O. No.250 of 2018 before this Court which was withdrawn before National Lok Adalat held on 12.11.2022. Now, the appellant has received legal advice to claim enhancement in compensation.
3. The appellant being claimant in the claim petition, he had right to seek modification of the award, irrespective of filing of appeal by the insurance company and though it is true that if an appeal filed by the insurance company is dismissed as withdrawn, cross objections shall be considered on its own merits, in the present case, neither cross objections were filed nor any separate appeal claiming enhancement was preferred for a period of seven years.
4. Recently, the Supreme Court in State of Madhya Pradesh Vs. Ramkumar Choudhary: 2024 SCC Online SC 3612, in Special Leave Petition (C) Diary No.48636 of 2024, decided on 29.11.2024,

upheld the decision of the High Court in refusing to condone delay in filing appeal. It was held in the judgment as under:-

"5. The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In Majji Sannemma v. Reddy Sridevi, 2021 SCC Online SC 1260, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in Ajay Dabra v. Pyare Ram, 2023 SCC Online 92, wherein, it was held as follows:

"13. This Court in the case of Basawaraj v. Special Land Acquisition Officer [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.1. In Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir, 2024 SCC Online SC 489, wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

"24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause

has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

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34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the

delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

5. In view of the above, this Court is not inclined to accept the explanation offered for condoning huge delay.

6. The application seeking condonation of delay is, accordingly, rejected.

7. Consequently, the appeal is dismissed as barred by limitation.

Order Date :- 31.1.2025 AKShukla/-