

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 898 OF 2023**

Prof (Mrs) Nelly Rodrigues, Retired Lecturer, wife of Adv. Jose J. Rodrigues, aged 63 years, married, Indian National, Resident of House No. 100, Calata, Majorda, P.C. 403 712, Salcete, Goa.

... Petitioner

Versus

1. The Branch Manager, IFFCO TOKIO General Insurance Co. Ltd., A/2, Reliance House, Isidorio Baptista Road, Pajifond, Margao, Salcete, Goa.

2. The Authorised Officer, IFFCO TOKIO General Insurance Co. Ltd., 2<sup>nd</sup> Floor, AFL House, Lok Bharati Complex, Marol Moroshi Road, Andheri (E), Mumbai.

... Respondents

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Mr. Shambhu S. Kakodkar, Advocate for the Petitioner.

Mr. Tarun V. Patel, Advocate for the Respondents.

**CORAM: BHARAT P. DESHPANDE, J.**

**DATED: 5<sup>th</sup> OCTOBER 2024**

**ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith.
  
2. The matter is taken up for final disposal at the admission stage itself with consent of the learned Counsel for the parties.

**3.** Heard Mr. Kakodkar for the Petitioner and Mr. Patel for the Respondents.

**4.** The legality or otherwise of the order passed by the National Consumer Disputes Redressal Commission, New Delhi vide order dated 20.09.2023, is questioned in the present Petition under Article 227 of the Constitution of India.

**5.** Mr. Kakodkar appearing for the Petitioner would submit that a Revision was filed by the Petitioner before the National Commission along with the Application for condonation of delay. A reply was filed on behalf of the Respondents and thereafter, rejoinder was filed by the Petitioner. He submits that the National Commission by the impugned order dismissed the delay Application without considering the grounds mentioned therein and the fact that the Petitioner was ready and willing to produce necessary documents to support her contentions.

**6.** Mr. Kakodkar would submit that the Petitioner has a very strong case on merits and the delay is only of 125 days, which was sufficiently explained and could have been condoned.

**7.** Mr. Kakodkar submits that after the order was passed by the State Commission in an Appeal, the Petitioner engaged an

Advocate from Delhi for the purpose of filing the Revision. She forwarded all the documents as well as the affidavit within 30 days, however, due to shifting of the office premises of the office of the Advocate at Delhi, the papers were misplaced.

**8.** Mr. Kakodkar submits that during the same time, the husband of the Petitioner was ill and therefore, she was unable to contact her Advocate at Delhi. He submits that thereafter, the papers were again forwarded and accordingly, the Revision was filed with a delay of 125 days.

**9.** Mr. Kakodkar submits that the Tribunal on extraneous grounds and without giving opportunity to the Petitioner to produce the documents, rejected the Application, thereby refusing to entertain the Revision.

**10.** Mr. Kakodkar submits that the order is passed by the National Commission, which is the Tribunal and therefore, the order passed by such Tribunal could be assailed under Article 227 of the Constitution of India before this Court as held in the case of **Universal Sompo General Insurance Co. Ltd. Vs. Suresh Chand Jain & Another, 2023 SCC OnLine SC 877.**

**11.** Mr. Kakodkar while placing reliance in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others, (2013) 12 SCC 649**, would submit that the delay which is of only 125 days could have been liberally considered and condoned thereby allowing the Petitioner to argue the matter on merits.

**12.** Mr. Kakodkar also placed reliance on the following decisions:

- (i) *Rafiq & Another Vs. Munshilala & Another, AIR 1981 SC 1400;*
- (ii) *Collector, Land Acquisition, Anantnag & Another Vs. Mst. Katiji & Others, AIR 1987 SC 1353;*
- (iii) *GMG Engineering Industries & Others Vs. Issa Green Power Solution & Others, (2015) 15 SCC 659;*
- (iv) *Bhivchandra Shankar More Vs. Balu Gangaram More & Others, (2019) 6 SCC 387;*
- (v) *Sridevi Datla Vs. Union of India & Others, (2021) 5 SCC 321 and*
- (vi) *M/s Sterling Agro Industries Ltd. Vs. Union of India & Others, AIR 2011 DELHI 174.*

**13.** The rejoinder affidavit is also filed today refuting the allegations made in the reply affidavit which is taken on record.

**14.** Per contra Mr. Patel appearing for the Respondents would submit that the grounds which are mentioned in the Application filed before the National Commission are casually drafted and cryptic. He submits that there are no calculations disclosed in the Application about the number of days of delay, which is required to be condoned and the place for mentioning such days is kept blank. He submits that the ground which is mentioned in the Application i.e. illness of the Petitioner, is not supported by any document. Similarly, the specific details about the shifting of the office of the Advocate at New Delhi are not disclosed.

**15.** Mr. Patel would submit that the rejoinder filed by the Petitioner before the National Commission discloses separate ground for condoning the delay i.e. the illness of the husband of the Petitioner, which is not stated in the main Application. He submits that the contention now raised that there was some error in the Application for condonation of delay, cannot be presumed as there is no such material placed before the Court.

**16.** Mr. Patel while placing reliance on the case of **Esha Bhattacharjee** (supra) and more particularly, paragraph 22, would submit that it is the duty of the Applicant to carefully draft the Application disclosing sufficient grounds, enclosing necessary

material to support it. It is the duty of the party to produce the documents and it is not the duty of the Tribunal to call the party to produce the documents.

**17.** Mr. Patel while placing reliance in the case of **Estate Officer, Haryana Urban Development Authority & Another Vs. Gopi Chand Atreja, (2019) 4 SCC 612**, would submit that blaming the other Advocate for causing the delay is not a good or sufficient ground.

**18.** The rival contentions fall for determination.

**19.** After the disposal of the Appeal filed before the Goa State Consumer Disputes Redressal Commission, which was rejected on 26.03.2018, the Petitioner, who was the Respondent in the said Appeal, preferred Revision under Section 12(b) of the Consumer Protection Act, 1986. Such Revision was filed along with the Application for condonation of delay.

**20.** The Application for condonation of delay along with the Revision was presented somewhere in the month of November 2018. The Application for delay contains eight paragraphs. The grounds for condoning the delay are found in paragraphs 4, 5, 6 and 7, which reads thus:

*"4. At the outset, the Petitioner submits an unconditional apology for the delay. It is submitted that the Petitioner during that time after the impugned order, was diagnosed with spinal stenosis and therefore, was undergoing treatment for the same in Goa. Therefore, the Petitioner was able to send instructions and engage a counsel in New Delhi only after he was treated for the same. The Petitioner is ready to submit the medical documents in support of the application, if, and when, the same will be required by the Hon'ble Commission.*

*5. Moreover, the Counsel engaged by the Petitioner was also undergoing a shift in his office premises and seemed to have misplaced the documents and affidavits required for filing of the instant petition.*

*6. It is submitted that the counsel so engaged was able to locate the said documents only some around 15 October, 2018 and thereafter, proceeded to draft the instant revision petition.*

*7. As a result of the above circumstances there has been a delay of \_\_\_\_\_ days for which the Petitioner seeks condonation"*

**21.** Mr. Patel is justified in pointing out that the Accused did not disclose the number of days of delay, which is required to be considered in paragraph 7 as well as the prayer clause is blank about the number of days which are required to be condoned. The

above paragraph nos. 4, 5 and 6 in the Application for condonation of delay shows two grounds, firstly, the illness of the Petitioner and thereafter, the fault on the part of the Advocate at Delhi, who misplaced the documents.

**22.** In the rejoinder filed before the Tribunal, the Petitioner came up with another ground as stated in paragraph 7(b) wherein she claimed that her husband was ill and therefore, there is a delay in filing the Revision of about 93 days. The Petitioner then disclosed that apart from 93 days, further delay of 30 days was due to the fact that the file was misplaced and the Petitioner had to forward another set of documents to her Advocate at Delhi.

**23.** The contention of Mr. Kakodkar that in the main Application for condonation of delay, there was a typographical error in paragraph 4 wherein the words “the husband of the Petitioner” was not included, inadvertently. However, such contention which is now raised. Such submission cannot be accepted now, since in the rejoinder filed before the National Commission, there is absolutely no such clarification or explanation disclosed on affidavit. The rejoinder filed before the National Commission in fact disclosed one more ground apart from illness of the Petitioner.

**24.** The National Commission while considering the grounds raised in the Application, clearly observed that the other submissions advanced before the Commission are totally different and separate from the submissions that are found mentioned in the Application.

**25.** A perusal of paragraphs 3 and 4 of the order of the National Commission would go to show that a separate ground has been raised while orally arguing the matter, which was not found mentioned in the Application for condonation of delay.

**26.** Similarly, the Commission has observed the attitude of the Petitioner wherein she stated that she is ready and willing to produce the documents, if required by the Commission. At this stage, it is necessary to note that the Petitioner approached the Commission with a prayer for condonation of delay, disclosing that she was ill. Thus, in order to substantiate such a ground, it was the duty of the Petitioner to produce necessary documents regarding her illness before the Commission so as to construe the meaning of sufficient cause for the purpose condoning the delay as provided under Section 5 of the Limitation Act. It is not the Commission, which will be required to direct the Petitioner to produce the documents. Such approach of the Petitioner is too

casual while presuming that the delay would be condoned by giving any reasons.

**27.** The Commission in its impugned order discussed the decisions passed by the Apex Court as to what constitutes sufficient cause.

**28.** While arguing the matter, Mr. Kakodkar failed to justify as to what is sufficient cause which was placed before the Commission. Similarly, he is unable to submit as to what is the error or perverse finding in the impugned order so as to entertain the Petition under Article 227 of the Constitution of India by this Court.

**29.** The second ground which has been claimed is regarding misplacement of documents in the office of the Advocate at Delhi. Such aspect is also casually stated in the Application as found in paragraphs 5 and 6. No specific details were disclosed. The concerned Advocate even failed to file an affidavit to justify such an aspect. If the documents were misplaced during shifting of his office, it was incumbent upon the Advocate to justify it by filing an affidavit as such fact was to the specific knowledge of said Advocate only and not of Petitioner who is residing in Goa. Only by making some averments in the Application for condonation of

delay, the Petitioner/party cannot expect that it should be accepted as a sufficient ground.

**30.** In the case of **Esha Bhattacharjee** (supra), the Apex Court discussed in detail the parameters to be applied in an Application for condonation of delay and curled out the broad principles in paragraph no. 21. The said principles read as under:

*21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

*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.*

*21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

*21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

*21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour 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.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

*21.12. (xii) The entire gamut of facts are to be carefully scrutinised 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.*

**31.** However, the Apex Court also found that taking the note of the present date scenario, some more guidelines may also be added to such principles. Such guidelines are found in paragraph 22.1 to 22.4, which read thus:

*22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring 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.*

*22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

*22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system*

*should be made as that is the ultimate institutional motto.*

*22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.*

**32.** The principles/guidelines mentioned in paragraph 22.1 to 22.4 in the case of **Esha Bhattacharjee** (supra) are squarely applicable to the matter in hand.

**33.** The learned Tribunal in its impugned order has observed that the grounds mentioned in the Application for condonation of delay cannot be construed as sufficient cause. It is immaterial whether the delay is of few days or whether it is inordinate. The concept of sufficient cause would apply to all such matters once the period of limitation is over and a specific right accrues in favour of the opposite party.

**34.** These observations of the National Commission cannot be faulted with as the Application for delay was drafted in a very casual manner and that too without any supporting documents. The approach of the Petitioner that she is ready and willing to

produce such documents as and when called upon by the concerned Authority, cannot be construed as her willingness to produce the documents. It is for the party to produce such document along with the Application for delay so that the other side is in a position to counter such documents. There was no need to withheld such documents from the Tribunal and also from the other side.

**35.** The jurisdiction of this Court under Article 227 of the Constitution of India is though supervisory, it is certainly guided by the landmark decision of the Apex Court in the case of **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil (2010) 8 SCC 329**. Unless there is perversity or illegality found in the impugned order, the Court cannot simply exercise jurisdiction. The impugned order passed by the Tribunal is found to be a well reasoned order and therefore, the grounds raised in the present Petition is devoid of merits. The Petition is therefore dismissed.

**36.** Rule stands discharged.

**BHARAT P. DESHPANDE, J.**