

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 19th March, 2021

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No.01 of 2020
in
MAC App. No.11 of 2020

Petitioner/Appellant : The Branch Manager,
National Insurance Company Limited.

versus

Respondents : Dechen Ongmoo Lepcha and Others

An application under Section 173(1) of the
Motor Vehicles Act, 1988.

Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellant.

Ms. Vidya Lama, Advocate for Respondents No.1 and 2.

Mr. K.B. Chettri, Advocate for Respondent No.3.

Mr. Umesh Gurung, Advocate for Respondent No.4.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. The instant application is filed by the Petitioner/Appellant under Section 173(1) of the Motor Vehicles Act, 1988 ("M.V. Act"), seeking condonation of 261 (two hundred and sixty one) days' delay in filing the Appeal.

2. Learned Counsel for the Petitioner/Appellant, while making an effort to justify the delay, submitted that the impugned Judgment was pronounced on 31.10.2019, copy of the Judgment was sought on 05.11.2019 vide application which was ready on 26.11.2019. The Appeal came to be filed on 05.11.2020 however after curing the defects was re-submitted on 11.12.2020. The

The Branch Manager, National Insurance Co. Ltd. vs. Dechen Ongmoo Lepcha & Others

limitation period of 90 (ninety) days admittedly, was over on 19.02.2020, as per Learned Counsel for the Petitioner/Appellant. Reliance was placed by Learned Counsel on the Circulars issued by the Registry of this High Court from 24.03.2020 after the lockdown owing to the COVID-19 pandemic. That, in view of the facts submitted hereinabove, the delay be condoned.

3. Learned Counsel appearing for Respondents No.1 and 2, Respondent No.3 and Respondent No.4 objected to the Petition on grounds that the Appeal ought to have been filed on 19.02.2020 and reliance by the Petitioner/Appellant on the Circulars issued by the High Court is erroneous as the first Circular, dated 24.03.2020, was issued almost a month after the period of limitation was over and was concerned with the lockdown after the COVID-19 pandemic broke out. The other Circulars dated 14.04.2020 and 18.04.2020 also have no relevance to the instant matter. That, as no other grounds have been specified for the delay, in such circumstances, the Petition merits no consideration.

4. I have heard Learned Counsel for the parties and considered their submissions. I have also perused the Petition and the Memo of Appeal.

5. The provisions of Section 173 of the M.V. Act which deals with Appeals may relevantly be considered, which is extracted hereinbelow;

"173. Appeals.—(1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the

The Branch Manager, National Insurance Co. Ltd. vs. Dechen Ongmoo Lepcha & Others

amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

[emphasis supplied]

6. It is clear from the second proviso *supra* that the High Court may entertain the Appeal after expiry of the period of ninety days if it is satisfied that the Appellant was prevented by "sufficient cause" from preferring the Appeal in time. Thus, the Appellant is required to prove "sufficient cause" for the delay. While explaining what "sufficient cause" entails, the Hon'ble Supreme Court in ***Basawaraj and Another vs. Special Land Acquisition Officer***¹ held *inter alia* as follows;

"11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of *bona fides* cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (*Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100]* and *Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201].*)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

¹ (2013) 14 SCC 81

The Branch Manager, National Insurance Co. Ltd. vs. Dechen Ongmoo Lepcha & Others

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.”

[emphasis supplied]

7. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***² the Hon’ble Supreme Court, while enunciating the principles applicable to an application for condonation of delay would *inter alia* hold as hereinbelow extracted;

“**21.** From the aforesaid authorities the principles that can broadly be culled out are:

.....
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.

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

.....
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.

.....
22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

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

² (2013) 12 SCC 649

The Branch Manager, National Insurance Co. Ltd. vs. Dechen Ongmoo Lepcha & Others

adjudication of a lis on merits is seminal to justice dispensation system.

.....”

The principles are to be adhered to by parties as also the Court who is vested with discretion, which obviously has to be exercised judiciously.

8. In light of the facts and circumstances placed before this Court today, it is indeed incongruous for the Petitioner/Appellant to have placed reliance on Circulars dated 24.03.2020, 14.04.2020 and 18.04.2020 which were issued much after the period of limitation had expired for filing the Appeal. No grounds have been put forth as to why the delay of 261 (two hundred and sixty one) days occurred prior to the COVID-19 pandemic and the issuance of the consequent Circulars. Although it was also urged by Learned Counsel for the Petitioner/Appellant that substantial justice ought to be meted out to the Appellant, however, in the same vein, Learned Counsel may be reminded that the compensation sought for is under benevolent legislation to mitigate the sufferings of persons who lose an earning member of the family in a motor accident besides suffering other non-pecuniary losses. The Circulars issued by the High Court, as already pointed out by Learned Counsel for the Respondents, have no relevance to the instant matter and are, therefore, outside the ambit of consideration.

9. Consequently, in view of the discussions which have emanated hereinabove and circumstances put forth by Learned Counsel for the Petitioner/Appellant which do not explain the delay, I am not inclined to condone the delay.

The Branch Manager, National Insurance Co. Ltd. vs. Dechen Ongmoo Lepcha & Others

- 10.** I.A. No.01 of 2020 stands dismissed and disposed of as also the Appeal.
- 11.** I.A. No.02 of 2020 also stands disposed of.
- 12.** No order as to costs.

(Justice Meenakshi Madan Rai)
Judge

19.03.2021