

Received on : 11/01/2018
Registered on : 11/01/2018
Decided on : 20/02/2018
Duration : 01 M, 9 D.

**BEFORE A.A. VYAS, PRESIDING OFFICER,
TENTH LABOUR COURT, MUMBAI.**

CONDONATION OF DELAY APPLICATION (ECA) NO. 1 OF 2018

CNR No. MHLCO1-000960-2016

IN

MISCELLANEOUS APPLICATION (ECA) NO. OF 2018

IN

APPLICATION (ECA) NO. 502/C-199 OF 2004

Shri Vijay Bhagwandas Raheja,
R/o. Raheja House,
Near Hare Ram Hare Krishna Mandir,
Gangadhar Bhaskar Road, Santacruz (W),
Mumbai- 400 054. ...Applicant

Versus

1. Shri Rameshkumar Lalbahadur Yadav,
R/o. Damodharpur, Post- Sonpur,
Dist. Chapada, Bihar.
2. Maqsood Ali Khan,
M/s. M S Enterprises,
S.V. Bhavan, 5th Carter Road,
Borivali (W), Mumbai- 400 066. ...Opponents

CORAM : Shri A. A. Vyas, Commissioner.

Appearances : Representative G.D. Talreja for Applicant.
Opponent no.1 – Ex-parte,
Advocate R.R Yadav for Opponent no.2.

ORDER

(Passed on this 20th day of February, 2018)

The applicant has filed present application to condone the delay to file the application for review and recall the Judgment passed on 30/04/2010.

2. It is submitted that, present opponent no.1 has filed an application for compensation under E.C. Act against present opponent no.2 and applicant. The matter get decided against present applicant ex-parte. It is submitted that, the present opponent no.1 has obtained said Judgment by fraudulently making some amendments. It is also submitted that, new facts have been discovered to the applicant after obtaining certified copies of all documents from the concern file.

3. It is submitted that, applicant has filed an application to recall and review the ex-parte Judgment. But the said application was not registered by the Commissioner for Employees Compensation and directed the applicant to file delay condonation application. It is submitted that, applicant has falsely involved in present case. The opponent no.1 has obtained ex-parte Judgment in the application for compensation by making incorrect amendments in the application. Present applicant was not at all liable for the compensation. Hence, applicant prayed to condone the delay caused if any.

4. The applicant issued notices to opponents through speed post. The noticed appeared to be served to opponents. The applicant also issued notice to the Advocate who was engaged by opponent no.1 in recovery application. Though sufficient opportunity has been given opponent no.2 only filed vakalatnama today without any say when the matter is posted for order.

5. Upon contentions of applicant following points arise for my consideration and my findings with reasons thereon are as under;

POINTS

FINDINGS

- | | |
|--|------------------------|
| 1) Whether applicant has made out good :
and sufficient cause to condone the
delay to review the application ? | “In negative” |
| 2) What order? | : “As per final order” |

REASONS

As to Points no.1 and 2 :

6. The applicant does not produce any evidence on record. Heard learned representative for applicant. It is submitted that, present opponent no.1 has filed an application for compensation bearing no. 502 of 2004 against present opponent no.1 and applicant. The matter went ex-parte against present applicant. According to the said Judgment and Award the opponent no.1 had started recovery proceeding bearing no. 535 of 2012. The recovery application came to be decided and recovery certificate has been issued against present applicant. Meanwhile, as recovery is not being effected opponent no.1 filed a Writ Petition before Hon'ble High Court. The Hon'ble High Court directed to decide recovery proceeding within a period of four months. The applicant submits that, opponent no.1 filed fresh proceeding bearing Recovery Application no. 326 of 2017 wherein present applicant received notice and got knowledge of all the facts and circumstances.

7. It is submitted by applicant that, the said ex-parte Judgment in compensation application has been obtained by the then applicant by applying fraudulent tactics and playing fraud on the opponents as well as Commissioner. It is submitted that, present applicant got knowledge of all the factual aspect of the matter when he obtained certified copies of documents and order in December 2017. It is also submitted that, actually there is no need to file present delay condonation application, but the Commissioner of Employees' Compensation has not got registered the review application and directed for delay condonation application. The applicant has not caused the delay intentionally and he has very good case in a review/recall the application.

8. I have gone through the application as well as the whole

proceedings initiated after filing the original application for compensation. The compensation application bearing no. 502 of 2004 proceeded ex-parte against present applicant. The said application has been decided on 30/04/2012 and accordingly, concerned applicant has preferred recovery application being no. 535 of 2012, It is the main contention of applicant that he was not aware about the factual aspects of the entire proceedings unless and until he obtained certified copies in December 2017. I perused the proceeding in the said recovery application and found that, present applicant has been represented by an Advocate and his written statement is also on record. I have gone through the order in said recovery application. My learned predecessor categorically observed therein the contentions raised by present applicant. Therefore, without any hesitation it can be observed that, present applicant is very well aware about the factual aspect of the case when the recovery application bearing no. 535 of 2012 came to be decided. Since then also the applicant has not approached this Court for review or the Hon'ble High Court.

9. It is the contention of applicant that, his Advocate in the said application has not represented him properly. On this point he relied on the case of; **Rafiq & Anr. vs. Munshilal & Anr.**, [1981 SCC (2) 788]. It is observed by Hon'ble Apex Court that; *"contesting party should not suffer for lapses on the part of their counsel. Rejection of the application for recalling the order not justified as party should not suffer for inaction or omission of his agent, the lawyer"*. I have gone through the case law and respectfully submits that, it is not helpful for applicant as it defers in facts as well as legal aspect. In the said case law counsel was not present before Hon'ble High Court and the order came to be passed. But in present case concerned Advocate for applicant was present and

took part in the proceedings.

10. It is also the contention of applicant that, when fraud has been played on the party, the party can approach the Court to recall its order and there is no need to approach the Hon'ble High Court. On this point he relied on two case of Hon'ble Apex Court. But the present application is now pending for condonation of delay to file review application. Therefore, merits of the case cannot be looked into, such as, fraud, misrepresentation, etc. It is necessary to be looked that whether applicant has made out a case to condone the delay of more than five year. Present applicant get into action when he received notice of recovery application bearing no. 326 of 2017. I have already observed that, applicant was properly represented in earlier recovery application by an Advocate. Though the recovery certificate has been issued against him he has neither followed the order and deposited the amount nor preferred appeal against the said ex-parte Judgment in original compensation application. Advocate for applicant relied on two case laws for condonation of delay.

(i) **Collector Land Revenue, Anantag & Anr. v/s Mst. Katiji & Ors.**, [1987 I LLJ 500] [Hon'ble Apex Court];

(ii) **N. Balakrishanan v/s M Krishmurthy**, [1998 (7) SCC 123] [Hon'ble Apex Court];

11. I have gone through the above case laws. It is observed by Hon'ble Apex Court that, Court should adopt a liberal and justice oriented approach in delay condonation matters. It is observed in case law at sr.(ii) by Hon'ble Apex Court that; *the words "sufficient cause" should be construed liberally- acceptability of explanation for the delay is sole criteria and length not relevant*. In present application the applicant has not produced any explanation to condone a huge delay of five years. There are no reasons much less sufficient reason pleaded in the

application. In *N. Balakrishnan* (supra) it is observed by Hon'ble Apex Court that; *"in absence of anything showing mala fide or deliberate delay as a delatory tactic Court should normally condone delay"*. In present application the applicant has not shown any reason as to why he could not approach the Courts after the Judgment in recovery application no. 535 of 2012 which came to be passed in 2014. The facts show that, applicant is not diligent in approaching the legal remedy. It is also necessary to be noted that, the original applicant till date has not received any amount for compensation since the Judgment has been passed in 2012. It is also necessary to be noted that, subsequent recovery proceedings is being filed by the present opponent no.1 and is to be disposed of as per the directions of Hon'ble High Court. I am of the opinion that, the applicant has not made out any case so as to condone the delay of more than five years. Accordingly, I answer the Point no.1 in 'negative' and in answer to Point no.2 following order is passed;

ORDER

- (i) Application is rejected.
- (ii) No order as to costs.

Sd/-

(A.A. Vyas)

Commissioner for Employees'
Compensation & Judge,
Tenth Labour Court, Mumbai.

Date : 20/02/2018

Rry/-

Argued on : 20/02/2018
Judgment dictated on : 20/02/2018
Judgment transcribed on : 20/02/2018
Judgment checked & signed on : 20/02/2018