

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6315 OF 2019

JIK Industries Co. Ltd. ..Petitioner
vs.
Maruti Nashik Mene ..Respondent

Ms. S. P. Munshi i/b. Mr. Sudhir N. Deshpande for the
petitioner.

Ms. Amrin Khan a/w Ms. Meenakshi Pahuja i/b. Mr. Avinash
M. Gokhale for the Respondent.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 18, 2022.

JUDGMENT :

1. This is an unfortunate case of the respondent-employee (hereafter "employee", for short) who had filed a claim before the Commissioner for Workmen's Compensation at Thane, under the Workmen's Compensation Act, 1923 as far back in the year 2007 which still awaits an adjudication on merits.

2. The petitioner-employer (hereafter "employer", for short) has challenged the judgment and order dated October 29, 2018 passed by the Commissioner for

Employees' Compensation and Judge, Third Labour Court, Thane (hereafter "the Labour Court", for short) condoning the delay of two years in filing the application for restoration and restoring the application (WCA) No.270/I-64/2007 to its original position.

3. Shorn of unnecessary details, the facts are stated hereafter.

The employee at the relevant time was working as a watchman with the employer. The alleged incident took place on July 28, 2004 at about 8.00 p.m. in the vicinity of the employer's chemical company premises. It is contended that the employee while discharging his duties as a watchman was seriously injured due to chemical explosion of reactor vessel (Tank) in the petitioner's company. On July 4, 2007, the employee filed an application for condonation of delay for contesting the main claim application on merits. The application for condonation of delay was dismissed in default on August 2, 2008. An application for restoration along with the application for condonation of delay and for contesting the claim

application on merits was made by the employee before the Labour Court on May 21, 2010. The employer filed a reply to the condonation of delay application in restoration application taking a stand that the restoration application and condonation of delay application were not signed by the employee but someone else. The evidence was led in respect of the delay condonation application in restoration application by both the parties. The employer examined a handwriting expert. It was the employer's case that the evidence of the handwriting expert clearly reveals that someone else on behalf of the employee was repeatedly playing fraud upon the Court by way of forgery i.e. by falsely signing in the name of the employee. It was submitted that the additional affidavit marked at Exhibit-28 before the Labour Court, the signature made as that of the employee was not his. The employer requested the Labour Court to initiate an enquiry.

4. The Labour Court vide order dated December 6, 2014 dismissed the employer's application to initiate enquiry into the allegation of fraud and misrepresentation. This Court by

an order dated March 24, 2017 set aside the Labour Court's order in a challenge to the Labour Court's order by the employer in Writ Petition No.3919 of 2016. The employee challenged the order passed by this Court in the Supreme Court. The Supreme Court allowed the Appeal and set aside this Court's order. The order dated May 15, 2018 of the Supreme Court reads thus :-

- “1. Leave granted.
2. The High Court has adopted a hyper technical approach and has set aside the order passed by the Labour Court.
3. It would be just and proper, in the facts and circumstances of the case, to set aside the order passed by the High Court. We accordingly set aside the same and restore that of the Labour Court.
4. In view of the above, the appeal is allowed and pending application, if any, stands disposed of.”
- 5.** Thereupon, the Labour Court proceeded with the hearing of the application for condonation of delay and restoration application. The Labour Court by the impugned order dated October 29, 2018 allowed the application for condonation of delay and also the restoration application.
- 6.** Learned counsel for the employer submitted that

such a course adopted by the Labour Court in allowing the application for condonation of delay and the application for restoration by a common order is not proper. In her submission, the Labour Court in the first instance should have only considered the application for condonation of delay and thereafter proceeded to hear the restoration application. According to her, no opportunity was granted to the employer to contest the application for restoration.

7. I have gone through the order of the Labour Court. The order is a well reasoned order. In my opinion, accepting the contention of learned counsel for the employer that the restoration application should have been heard separately would again amount to adopting a hyper technical approach as observed by the Supreme Court in its order dated May 15, 2018 quoted above. Even in so far as the application for condonation of delay is concerned, I find that the Labour Court took into consideration the decision of the Supreme Court in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others**¹. In **Esha Bhattacharjee** (supra), the Supreme

¹ (2013) 12 SCC 649

Court after referring to various authorities broadly culled out the following principles :-

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.

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.

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

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.

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

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 event there is no real failure of justice.

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

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.

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.

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.

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.

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.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

8. Their Lordships in addition to the aforesaid principles added some more guidelines taking note of the present day scenario. They are :-

"a) An application for condonation of delay should be drafted with careful concern and not in a half hazard

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.

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.

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.

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

9. Having gone through the findings of the Labour Court, I do not find any reason to take a view different than the one in the impugned order. The objections raised by the learned counsel are hyper technical in nature which has resulted in delaying the adjudication of the claim petition of the employee on merits. I find this to be a fit case to impose exemplary costs on the employer who has filed such a frivolous petition. The employer at every stage is resorting to challenging the interlocutory orders passed by the Labour Court obviously with a view to defeat and delay

the adjudication of the main application on merits. The employee has been dragged to this Court unnecessarily and vexatiously by the employer who should have gracefully accepted the impugned order passed by the Labour Court and contested the claim application of the employee on merits. The employee suffered serious injuries in 2004. The claim application for compensation awaits a decision on merits though filed as far back as in the year 2007. A hyper technical objection was raised once by the employer earlier. The hyper technical objection is once again repeated by filing this writ petition. I therefore have no hesitation in imposing exemplary costs on the petitioner-employer of Rs.50,000/- to be paid to the respondent-employee within a period of four weeks from today. If the cost is not paid within a period of four weeks from today, it would be open for the Labour Court to take further steps or provide for the consequences of non-payment of cost in accordance with law.

10. Though this petition filed by the employer not only deserves to be dismissed with exemplary costs, but it is

also necessary to expedite the application before the Labour Court in the interest of justice. The Labour Court is directed to decide the application referred to in clause (3) of its operative order as expeditiously as possible and in any case within a period of twelve weeks from November 16, 2022 when the parties are directed to remain present along with the copy of this order.

11. Subject to the above, the writ petition is dismissed with costs quantified at Rs.50,000/-.

(M. S. KARNIK, J.)