

OD-1 & 2

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

IA NO. GA/2/2024
WPO/639/1999

C. VARDHAN KUMAR
VS.
NATIONAL INSURANCE CO.
&
IA NO. GA/3/2024
WPO/639/1999

C. VARDHAN KUMAR
VS.
NATIONAL INSURANCE CO.

BEFORE:

The Hon'ble JUSTICE ANANYA BANDYOPADHYAY

Date : 10th January, 2025

Appearance

Mr. Debapriya Gupta, Adv.
Ms. Esha Das, Adv.
...for the petitioner

Mr. Ranjay De, Adv.
Mr. Basabjit Banerjee, Adv.
Mr. Adityajit Abel Bose, Adv.
...for the respondents

The Court: The learned Advocate representing the petitioner has filed an application being GA/2/2024 for condonation of delay of 1616 days in filing the restoration application. The learned Advocate representing the petitioner submits due to the period consumed by the Corona pandemic and prolonged illness of the relatives of the petitioner, an application for restoration could not be filed. Furthermore, the erstwhile Advocate-on-Record did not represent the petitioner on several occasions and sought for adjournments to the prejudice of the petitioner.

The petitioner in support of his contention relied upon the decision of the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*, reported in (2013) 12 Supreme Court Cases 649 and emphasized on paragraph 15 of the said judgment stating that it is incumbent upon the Court to adopt liberal approach in condoning the delay wherein there is adequate merit in the case of the petitioner to succeed.

Paragraph 15 of the said judgment states as follows:-

"15. In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn. where a two-Judge Bench of this Court has observed that: (SCC p.465, para 14)

"14. ... The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if insufficient cause is shown for not availing the remedy within the stipulated time."

Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

The learned Advocate representing the respondent refuted the contentions of the learned Advocate representing the petitioner stating that there has been intentional lapse on the part of the petitioner not to contest the instant petition and relied on the decision of the Hon'ble Supreme Court in paragraphs 21.7 to 21.12, as well as 22.4 of the aforesaid judgment.

Paragraphs 21.7 to 21.12, as well as 22.4 of the aforesaid judgment are replicated below:-

“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 scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

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.”

The learned Advocate representing the respondent contended that on frivolous grounds without plausible explanation, the petitioner could not be allowed to take advantage of the delay in filing the relevant application. The fact of delay should be substantiated by pragmatic reasons devoid of lackadaisical attitude, with proper explanation. The negligent behaviour on the part of the petitioner debars him to the relief claimed since he has been at fault to contest the writ petition and proceeding with the hearing of the same.

Considering the intermittent period pertaining to the COVID pandemic, as well as the negligent act on the part of the erstwhile Advocate-on-Record not to pursue the hearing of the instant writ petition seeking adjournments on behalf of the writ petitioner to his prejudice, the application for condonation of delay of 1616 days is allowed for ends of justice.

Let the writ petition be restored to its original file and number subject to the condition that the writ petitioner should be represented by his learned

Advocate on each and every date of hearing. No further adjournment will be granted on any occasion.

Accordingly, GA/2/2024 and GA/3/2024 are allowed.

Let the matter be fixed on 27th February, 2025.

(ANANYA BANDYOPADHYAY, J.)

sg.