

IN THE HIGH COURT OF SIKKIM
CIVIL APPELLATE JURISDICTION

M. A. C. App. No. 01 OF 2016

The Branch Manager,
The Oriental Insurance Company Ltd.,
M. G. Marg, P. O. & P. S. Gangtok,
East Sikkim. ----- Appellant.

-VERSUS-

1. Mrs. Doli Sunar,
W/o Late Jetha Sunwar @ Jetha Sunar,

2. Mr. Panu Sunar,
S/o Late Jetha Sunwar @ Jetha Sunar,
Both residents of Upper Line,
Kathalguri Tea Garden (D),
P. O. Kathalguri & P. S. Banarhat,
District Jalpaiguri,
West Bengal.
- Respondents/Claimants.

3. Sint. Neena Pradhan,
W/o Shri Prem Pradhan,
R/o Duga, P. S. Rangpo,
East Sikkim.
- Respondent.

PETITIONER

ADVOCATE (S)

FOR ----- Mr. Shrawan Kumar Prasad.

RESPONDENT

ADVOCATE (S)

FOR _____

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02.	22.04.2016	M.A.C. App. No. 01 of 2016 The Branch Manager, Oriental Insurance Company Ltd. vs. Mrs. Doli Sunar & 2 Ors. BEFORE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE Present: Mr. Shrawan Kumar Prasad, Advocate for the Appellant. ----- Mr. Ajay Rath and Ms. Phurba Diki Sherpa, Advocates, appear on behalf of Respondents No. 1 and 2 and files their Vakalatnama. Mr. Ashok Pradhan, Advocate, appears on behalf of Respondent No.3 and files his Vakalatnama. The same are taken on record. <u>I.A. No. 1 of 2016</u> Heard. The Petitioner seeks condonation of delay of 106 days, <i>inter alia</i>, on grounds that the delay occurred due to the Organization being a Government Organization and required time for obtaining sanction and expert opinion of the Counsel of the Appellant at Kolkata. That, due to the process, the matter was prolonged and although the Appeal was drafted immediately after legal opinion was obtained and the Appeal ought to have been preferred immediately, nevertheless the delay of 106 days occurred on grounds given above which may be condoned. To the contrary, it is vehemently argued by the Learned Counsel for the Respondents No.1 and 2, that in the first instance an application under Section 5 of the Limitation Act, 1963 does not lie in the instant matter, there being a specific

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		provision for condonation of delay under the Motor Vehicles Act 1988, as embodied under Section 173 thereof. That, no substantial grounds have been put forth in the Petition seeking condonation of delay and the Appellant, after receiving the Award of the Learned Tribunal has delayed in forwarding it to the Divisional Office at Siliguri. Consequently, the Petition deserves no consideration and the same be dismissed. Learned Counsel for Respondent No.3, for his part contended that the Petition does not make out reasons for the delay of each and every day as required by Law and there being no sufficient grounds for the delay, inasmuch as no valid explanation have been forthcoming from the Petitioner, hence, the Petition be dismissed. Considered submissions. I have also carefully perused the Petition, wherein the grounds for delay have been detailed. As pointed out by Learned Counsel for the Respondents, Section 173 of the Motor Vehicles Act, 1988 is a composite Section vide which the second proviso deals with condonation of delay. Nevertheless, the spirit of both Section 5 of the Limitation Act, 1963 and Section 173 of the Motor Vehicles Act, 1988 are the same in as much as both envisage condonation of delay by the Court if "sufficient cause" is made out, hence the Petition is being considered. It is evident from the facts before this Court that after the impugned Judgment and Award was pronounced on 31.07.2015, a copy was made available to the Appellant on 04.08.2015, from which date the period of limitation started running for a period of 90 days. On receipt of the Award, it was forwarded to the Siliguri Office on 11.08.2015 where it was received on 17.08.2015, which in turn forwarded it to the

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		Kolkata Regional Office on the same date. Thereafter, steps were taken for obtaining the expert opinion of the Standing Counsel at Kolkata and at the same time from the Counsel who conducted the matter before the Tribunal. No dates with regard to the steps taken as stated above have been put forth by the Learned Counsel. The other ground, as mentioned in Sub-Paragraphs (i) and (j) of Paragraph 2 of the Petition, also do not put forth any grounds or the specific period of time which was taken by the Appellant in each of the Offices. It may be relevant to point out that the Hon'ble Apex Court in Basawaraj v. Land Acquisition Officer : (2013) 14 SCC 81 held, <i>inter alia</i>, as follows that the statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury and to quicken diligence and to prevent oppression. While referring to the case of Madan Lal v. Shyamlal: (2002) 1 SCC 535 and Ram Nath Sao v. Gobardhan Sao : (2002) 3 SCC 195, it was held that 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 <i>bona fides</i> 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. The Hon'ble Apex Court went on to opine that 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. The result flowing from a statutory provision has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provisions may

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		cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. It went further to hold that the legal maxim <i>dura lex sed lex</i> which means "the law is hard but it is the law", stands attracted in such a situation. That inconvenience is not a decisive factor to be considered while interpreting the statute. On the anvil of the principle enunciated above, on careful perusal and consideration of the grounds for delay hereinabove put forth by the Appellant, I do not find any <i>bona fides</i> added to which after the date of 17.08.2015 no further dates have been detailed by the Pertitioner/Appellant. If the Appellant was aggrieved by the Impugned Judgment and Award of the Tribunal, it ought to have moved at the earliest possible and if the Officers of the Appellant Company were so interested they could have given priority and expeditiously processed the File. The lackadaisical attitude is a clear indication of the fact that the Petition lacks <i>bona fides</i> and is a dilatory tactic to delay the process of execution of award. Consequently, I find that the Appellant has failed to put forth any "sufficient cause" as required by Law before this Court and, therefore, the Petition for condonation of delay requires no consideration and is accordingly dismissed. I.A. No. 1 of 2016 stands disposed of accordingly. Consequently, the Appeal is also dismissed.  Judge 22.04.2016 Index : Yes / No Internet : Yes / No ds/bp