IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

SHILLONG BENCH

Misc. Case No. 157(SH) of 2012.
A/o R.F.A. No. 2(SH) of 2012.

Divisional Manager
Oriental Insurance Co. Ltd.,
Pulin Bhavan, Keating Road,
Shillong-1, District:East Khasi Hills,
Meghalaya :::
Applicant

-vs-

1. Shri Gaybreanath Khongwir
s/o (L) M Marbaniang
r/o Polo Hills, Shillong-1
District : East Khasi Hills, Meghalaya

2. Miss Almita Khongwir
r/o Polo Hills, Mawpun,
Shillong-1, District : East Khasi Hills,
Meghalaya
(Owner of Tata Indigo No. ML -5 D 5531) :::
Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

Advocate for the Applicant : Mr I Ahmed,
Mr BK Deb Roy,
Mr SD Upadhaya,
Mr S Deka, Advs.

Advocate for the Respondents : Mr LR Das,
Ms M Chakraborty,
Mr T Chanda, Advs.

Date of hearing : 28.08.2012

Date of judgment and order : 11-9-2012

JUDGMENT AND ORDER

Both Mr. B.K. Deb Roy, the learned counsel for the applicant-insurer and Mr. L.R. Das, the learned counsel for the claimant-respondent, were heard at length. The application is for condonation of delay. The admitted position of the parties is that the judgment and award sought to be challenged in the connected appeal was delivered by the Motor Accident Claims Tribunal, Shillong on 21-12-2011. The Tribunal was, however, closed for vacation with effect from 24-12-2011. The lawyer of the applicant could not apply for a certified copy of the judgment and award before 24-12-2011: the certified copy was applied for only on 14-2-2012, and was received on 24-2-2012. The applicant thereafter sought for legal opinion from their panel lawyer. The first opinion was obtained on 13-2-2012 whereafter it was sent for further legal opinion from another senior panel advocate, and the same was received on 7-3-2012. The matter was thereafter placed before the Chief Regional Manager to decide on whether appeal was to be preferred or not. The Manager sought for further legal opinion from another senior panel advocate, who ultimately on 8-4-2012 gave his opinion for preferring an appeal. The case was then endorsed to the current lawyer on 23-4-2012, but he could not prepare the memo of appeal as he had to collect the relevant case materials. The appeal was finally ready on 7-5-2012 and was presented before this Court on 16-5-2012. Though the applicant claims that there was a delay of 110 days, there was an actual delay of 115.

2. The application is strongly opposed by the respondent No. 1 and 2 by filing their respective show causes. It is pointed out by them

that the court was not closed up to 31-1-2012; on the contrary, it had already re-opened on 27-1-2012. No explanation was offered by the applicant for applying the certified copy of the judgment and award only on 14-2-2012. According to the answering respondents, there is absolutely no convincing explanation for the inordinate delay in not presenting the appeal in time: it is only when satisfactory explanation is offered that a delay can be condoned by this Court. The instant case is not one in which no material could be shown by the applicant to constitute sufficient for the delay of over 115 days and, as such, the application is liable to be dismissed.

3. In my opinion, the applicant is not able to show satisfactory explanation for the delay. However, the court, while exercising its discretion under Section 5 of the Limitation Act, 1963, is expected to adopt a pragmatic approach. A distinction is to be made between a case where the delay is inordinate and a case where the delay is for a few days. Whereas in the former case, consideration of prejudice to the other side will be a relevant factor, which, therefore, calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance.— See ***Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106***. What is important is not the length of the delay but the sufficiency of the explanation of the delay. Shortness of the delay is one of the circumstances to be taken into account in using the discretion. However, in the case of appeal by the State or its instrumentalities,

the latest legal position is stated by the Apex Court in ***Post Master General v. Living Media India Ltd., (2012) 3 SCC 563*** and ***Maniben Devraj Shah v. Municipal Corpn. Of Brihan Mumbai, (2012) 5 SCC 157***. Both the decisions reviewed the entire case-laws starting from ***Collector, Land Acquisition v. Katiji, (1987) 2 SCC 107***. The observations of the Apex Court in ***Maniben Devraj Shah*** (*supra*) may be reproduced below: (SCC, p. 168-69, paras 23, 24 and 25).

> *"23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*
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> *24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretions not to condone the delay.*
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> *25. In case involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the application filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."*

4. In the instant case, the question to be determined is whether there was total lethargy or utter negligence on the part of the appellant-insurer in not presenting the appeal in time. What is important to consider is the totality of the circumstances which prevented the insurer from filing the appeal in time. It is true that there was no explanation for its failure to apply for the certified copy

of the judgment and award between 21-12-2012 and 24-12-2012, but then it will be unrealistic on the part of this Court to expect the insurer, unlike a private individual, to act with lightning speed or to expect its officials to act with the zeal normally expected from a private player: after all, it is nobody's personal case. True, there was apparent lethargy on the part of the insurer in not applying for the copy of the judgment immediately after the re-opening of the Tribunal and waited for another seventeen days to apply for the copy i.e. 27-1-2012 and 14-2-2012. Undoubtedly, the decision-making process of the insurer was proceeding on a snail's pace. But, in my judgment, to insist the insurer with a large number of its officials and staff working under it and its panel lawyers involved in the decision-making, to complete the exercise within a period of, say, three or four months would be a tall order. Some latitude shall have to be allowed to the insurer so that public interest does not suffer. Sometimes, even panel lawyers consulted by it may disagree in the matter of filing an appeal, which can further delay the decision-making process for appeal. Therefore, even though the insurer appears to be not as vigilant as it ought to have been, yet it cannot at the same time be accused of utter lethargy or gross negligence so as to brand it to be an irresponsible litigant. It should have been and ought to have been swifter, more alert and vigilant in its decision-making process, but its failure to take an out of the ordinary steps/efforts should not oust it from prosecuting the appeal. On the other hand, the claimant-respondent can always be compensated for in costs.

5. In the light of the foregoing discussion, this application is allowed. The delay stands condoned subject to payment of cost of

`5,000/- (Rupees five thousand) only to the claimant-respondent within a period of twenty days from the date of receipt of this judgement, failing which the impugned award will inure to the benefit of the claimant-respondent without further reference from this Court.

Judge.

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JUDGE

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