

HIGH COURT OF SIKKIM
Record of Proceedings

I.A. No.01 of 2024 in MAC App./131/2024 (Filing No.)

THE MANAGER,
HDFC ERGO GENERAL INSURANCE COMPANY LIMITED

APPLICANT

VERSUS

LAXMI SHERPA AND ANOTHER

RESPONDENTS

Date: 01.04.2025

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Applicant Mr. Rahul Rathi, Advocate.

For Respondents

R-1 Ms. Vidya Lama, Advocate.

R-2 Mr. Anil Gurung, Advocate.

ORDER

1. There has been a delay of thirty-five days' in filing the instant Appeal for which the Applicant seeks condonation by filing I.A. No.01 of 2024, which is an application under Section 173(1) of the Motor Vehicles Act, 1988.

2. The grounds put forth for the delay by Learned Counsel for the Applicant *inter alia* are that, after the Applicant obtained the impugned Judgment dated 11-07-2024, online it was forwarded to the Branch Office situated at Siliguri, West Bengal, on 05-08-2024. The Branch Office on 17-08-2024 forwarded the File to the Regional Office, situated at Kolkata, West Bengal, for opinion as to whether an Appeal was to be filed. The Regional Office forwarded the File to its Legal Department on 28-08-2024, seeking legal opinion which was given on 09-10-2024 and the File was returned to the Regional Office, at Kolkata, on 12-10-2024. The File was received at the Branch Office, Siliguri, on 20-10-2024 and thereafter by the conducting Counsel on 25-10-2024, requiring the Counsel to prepare the Appeal. The Learned Counsel prepared the Appeal, the draft of which was forwarded to the Branch Office, Siliguri, on 05-11-2024. After vetting it was returned on 08-11-

HIGH COURT OF SIKKIM
Record of Proceedings

2024 and the Appeal filed on 14-11-2024. That, the delay of thirty-five days' was unintentional and that the Appeal be considered and condoned as the Applicant has a good case on merits and the delay has been explained to show that the Appellant was prevented by sufficient cause from filing the Appeal on time.

3. Opposing the arguments advanced, Learned Counsel for the Respondent No.1 submitted that the length of delay is not the issue herein but the acceptability of the explanation is the criterion as on some occasions delay of the shortest range may not be condonable, due to want of acceptable explanation, whereas in other cases long delays can be condoned on account of satisfactory explanation. Reliance on this count was placed on **N. Balakrishnan vs. M. Krishnamurthy**¹. Relying on the decision in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others**² it was urged that the grounds advanced do not qualify as "sufficient cause", besides which the application was drafted in a haphazard manner with erroneous dates. That, the grounds given for the delay deserve no consideration as it concerns the movement of File from one authority to the next which ought to have been done well within time, hence the Petition be rejected.

4. Learned Counsel for the Respondent No.2 had no specific submissions to advance.

5. The submissions (*supra*) have been afforded due consideration by me. In **Inder Singh vs. State of Madhya Pradesh**³, the Supreme Court *inter alia* held as follows;

"17. No doubt, *Ramchandra Shankar Deodhar* (*supra*) relates to a writ petition, but the statement of law laid down is

¹ (1998) 7 SCC 123

² (2013) 12 SCC 649

³ 2025 SCC OnLine SC 600

HIGH COURT OF SIKKIM
Record of Proceedings

clear. *Sheo Raj Singh* (supra) has also considered the impersonal nature of the functioning of the State, taking note of what was observed in *State of Manipur v. Kotin Lamkang*, (2019) 10 SCC 408. In *A B Govardhan v. P Ragothaman*, (2024) 10 SCC 613, the Court considered as under:

'37. *In Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107], the Court noted that it had been adopting a justifiably liberal approach in condoning delay and that "justice on merits" is to be preferred as against what "scuttles a decision on merits". Albeit, while reversing an order of the High Court therein condoning delay, principles to guide the consideration of an application for condonation of delay were culled out in Esha Bhattacharjee v. Raghunathpur Nafar Academy [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]. One of the factors taken note of therein was that substantial justice is paramount [Para 21.3 of Esha Bhattacharjee [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]].*

38. *In N.L. Abhyankar v. Union of India [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574 : (1995) 1 Mah LJ 503], a Division Bench of the Bombay High Court at Nagpur considered, though in the context of delay vis-à-vis Article 226 of the Constitution, the decision in Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598], and held that: (N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574 : (1995) 1 Mah LJ 503], SCC OnLine Bom para 22)*

"22. ... The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such, but the test is whether by reason of delay there is such negligence on the part of the petitioner, so as to infer that he has given up his claim or whether before the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."

(emphasis supplied)

39. *The Bombay High Court's eloquent statement of the correct position in law in N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574 : (1995) 1 Mah LJ 503] found approval in Municipal Council, Ahmednagar v. Shah Hyder Beig [Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48] and Mool Chandra v. Union of India [Mool Chandra v. Union of India, (2025) 1 SCC 625].*

40. *In the wake of the authorities abovementioned, taking a liberal approach subserving the cause of justice, we condone the delay and allow IA No. 16203 of 2019, subject to payment of costs of Rs. 20,000 (Rupees twenty thousand) by the appellant to the respondent.'*

(emphasis supplied)

HIGH COURT OF SIKKIM
Record of Proceedings

18. Considering the above pronouncements and on an overall circumspection, we are of the opinion that the Second Appeal deserves to be heard, contested and decided on merits. However, a note of caution is sounded to the respondent to exhibit promptitude in like matters henceforth and *in futuro*, failing which the Court may not be as liberal.”

6. In light of the above pronouncement and considering the grounds for the delay advanced herein, I am of the view that for the cause of substantial justice the delay ought to be condoned to enable the Appeal to be contested and decided on merit. It however does not tantamount to a pronouncement of this Court that in all matters of delay, merit would be the sole consideration, thereby blindsiding the object and purpose of the period of statutory limitation.

7. Delay is accordingly condoned subject to payment of cost of ₹ 50,000/- (Rupees fifty thousand) only, by the Applicant, to the Respondent No.1. The deposit shall be made within a week from today failing which the costs shall be enhanced.

8. I.A. No.01 of 2024 stands disposed of.

Judge
01.04.2025

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