

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.4727 OF 2013
IN
FIRST APPEAL (ST) NO.14470 OF 2013

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. S. G. Thorat for the Applicant
Mr. C. M. Lokesh for the Respondent No.1.

CORAM : K. K. TATED, J.
DATE : APRIL 24, 2015

P.C.:

1. Heard. None for the Respondent No.2 though served.

2. This Application is for condonation of 2 years and 897 days delay in filing the First Appeal challenging the judgment and award dated 20/08/2010 passed by the MACT, Kolhapur in MACP No.509/2006 for enhanced compensation.

3. The learned counsel for the Applicant submits that Respondent No.1 also preferred First Appeal No.412/2012 challenging the same judgment and award dated 20/08/2010, which is admitted by this court on 11/04/2012. He submits that in that appeal, the Respondent preferred Civil Application for stay of the impugned judgment

and award, wherein this court granted stay and allowed the Applicant – claimant to withdraw sum of Rs.4,00,000/- towards compensation amount. He submits that after getting this amount, he contacted his Advocate to file the present appeal. As such, there is delay in preferring the First Appeal.

4. On the other hand, the learned counsel for the Respondent No.1 vehemently opposed the present Civil Application. He submits that the Applicant has not shown sufficient cause for condonation of inordinate delay of more than 2 years. He submits that the Applicant received sum of Rs.4,00,000/- by order dated 11/04/2012 passed by this court and they filed the First Appeal in 2013. He submits that the reasons disclosed by the Applicant in Civil Application do not construe sufficient cause for allowing the Civil Application. Hence, there is no substance in the present Application. Same be dismissed.

5. It is to be noted that, in the present proceedings, the Applicant claimant sustained injuries in the accident which occurred on 16/06/2005. Hence, he filed claim petition under section 166 of the Motor Vehicles Act for compensation of Rs.14,17,000/-. Considering the evidence on record, the Tribunal awarded sum of Rs.9,52,412/- by way of compensation. The

Applicant received sum of Rs.4 lacs out of total compensation. This court admitted the First Appeal filed by the Respondent and passed an order in Civil Application No.623/2012. Thereafter the Applicant took steps to file the present appeal.

6. It is to be noted that the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123* held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to

dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

7. Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for

allowing the present Civil Application. At the same time, the Applicant to pay cost of Rs.10,000/- to the Respondent No.1 or deposit in the Registry of this court within 8 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

8. Hence, the following order:

a) Civil Application is allowed in terms of prayer clause (a) which reads thus:

a) Be pleased to condone the delay of 897 days in filing the present appeal and allow the Applicant - Appellant to entertain the present appeal before this Hon'ble Court

b) The Applicant to pay cost of Rs.10,000/- to the Respondent No.1 or deposit in the Registry of this court within 8 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

c) Civil Application stands disposed off accordingly.

JUDGE