

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1637 OF 2014
IN
FIRST APPEAL (ST). NO.27403 OF 2013**

Smt.Sindhu Ramesh Jagtap and Ors. .. Applicants

Vs.

Shri Mukund Bhaskar Chitale and Ors. .. Respondents

Mr.Purushottam G. Chavan for the applicant

Mr.Ketan Joshi for the respondent no.3

**CORAM : K.K.TATED, J.
DATED : 07/08/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by claimant for condonation of 2 years 282 days delay in filing First Appeal challenging the judgment and award dated 14.9.2010 passed by MACT, Pune in MACP No.1164 of 2004.

3 Though respondent nos.1 and 2 are duly served, no one appeared on behalf of them when the matter was called out.

4 The learned counsel for the applicant submits that the applicant

are illiterate persons and they do not know the procedure to prefer appropriate application before this court. He further submits that on the date of accident, applicant nos.3 and 4 were minors. He submits that even the Advocate who appeared on behalf of them in the Trial Court failed to intimate the judgment and award dated 14.09.2010 passed by the Trial Court. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing First Appeal. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. He submits that applicant has good chance of success in the present matter.

5 On the other hand, the learned counsel for the respondent Insurance Company vehemently opposed the present Civil Application. He submits that applicant has not shown sufficient cause for condonation of delay. Hence, there is no substance in the present Civil Application and same be dismissed.

6 I have heard both the sides at length. It is to be noted that in the present proceeding, advocate who appeared on behalf of the applicant claimant in Trial Court failed to intimate the judgment and award dated 14.09.2010 passed against them. Hence, there is a delay in preferring the First Appeal. The reasons given by the applicant in paragraph 4 of the Civil Application discloses sufficient cause for condonation of delay.

7 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.”

8 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and the law declared by the Apex Court, I am of the opinion that applicant has made out a case for allowing the present Civil Application. Hence, the following order:

- a) Delay in preferring First Appeal is condoned.
- b) Civil application stands disposed off accordingly.

(K.K.TATED, J.)