

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1709 OF 2014

IN

FIRST APPEAL (ST) NO.28108 OF 2013

United India Insurance Co. Ltd. ... Applicant

Vs.

Mohini Kundanlal Wasan & Ors. ... Respondents

Mr. S.M. Vidyarthi for the Applicant.

CORAM : K.K. TATED, J.

DATE : 27TH FEBRUARY 2015

P. C.:

1. Heard learned counsel for the Applicant.
2. This application is preferred by the United Indian Insurance Company Limited for condonation of one year and 33 days' delay in filing the first appeal challenging the judgment and award dated 19/12/2011 passed by the Motor Accident Claims Tribunal, Bombay in Application No.3121 of 1996 awarding compensation of Rs.2,05,000/- with 7.5% interest from the date of award till its realization to the Respondents-Claimants. Learned counsel for the

Applicant submits that immediately after the judgment and award is passed, the Applicant had preferred an application for certified copy on 30/12/2011. The certified copy was ready for delivery on 21/5/2012. The same was collected by the Applicant on 5/6/2012. Thereafter, they filed the present first appeal in this Court on 31/08/2013.

3. Learned counsel for the Applicant submits that the office of the Applicant sought opinion of their panel advocate in the month of July, 2012. Thereafter, papers were forwarded to the higher authorities. He further submits that their Faridabad Divisional office carried out investigation and learnt that the insurance policy placed on record is not in respect of offending vehicle bearing No.HR-29-A-2923 i.e. lorry but the same was of motorcycle. Thereafter, they decided to file the present first appeal in this court. He submits that the investigation consumed a lot of time. He further submits that because of communication gap between their outstation office, which was doing the investigation, the delay was caused in preferring the first appeal. He further submits that due to the pressure of work and preparation of cheques required for filing appeal such as mandatory deposit under Section 173 and the court fee cheque are also the reasons for the delay. In support of his contention, the learned counsel for the Applicant relied on paragraph 3 of the civil application which reads thus:

“The said office sought opinion of their panel Advocate in the month of July, 2012. The said TP HUB also applied its mind to the facts and circumstances of the case and as their defence was of non-insurance of the vehicle in question investigated the matter to reassure themselves on their defence. They therefore requested their Faridabad Divisional Office to investigate the matter and trace out policy particulars and also ownership details from their office and if not available from the local RTCO. In the course of investigation with the local RTO, the Petitioner's office at Faridabad found that the vehicle in question bearing No.HR-29-A-2923 was not a lorry but a motorcycle. This means that there is a mistaken identity of the vehicle and apart from non-insurance of the vehicle, this was also a case of non-involvement of the vehicle in question. It was this delay in investigation that consumed a lot of time. After some amount of delay due to communication gap between their outstation offices which was doing the investigation Divisional Office and Regional Office and they could not file appeal in time. Besides this, due to pressure of work and preparation of cheques required for filing Appeal such as mandatory deposit u/s.173 & Court fees Cheque were also delayed due to administrative exigencies there was further delay. Since the TP Hub of the Petitioners has to deal with cases of offices that are doing underwriting business all over the country which includes cases filed before the local MACT, Labour Court and High Court Appeals, and they have a shortage of staff and, therefore affirmation of the civil applications filed along with this appeal was also delayed. All these factors contributed to the delay.”

4. Learned counsel for the Applicant submits that in the interest

of justice, this Hon'ble Court be pleased to condone the delay of 1 year and 33 days in filing the first appeal.

5. I have heard learned counsel for the Applicant at length. It is to be noted that in paragraph 3 of the civil application, the Applicant has not disclosed the date on which the matter was referred to their officer; when the matter was handed over to the investigating officer and when they received the investigation report. It is not explained by the Applicant in paragraph 3 of the civil application when the concerned officer decided to file the present first appeal in this Court. It is not stated in the said paragraph when the cheque was issued by the concerned officer for the mandatory deposit under Section 173 and the court fees. There is no explanation when the matter was handed over to the concerned advocate for filing the same in this Court.

6. In the present proceedings, the Motor Accident Claims Tribunal by impugned judgment and award dated 17/12/2011 awarded a sum of Rs.2,05,000/- with 7.5% interest to the Respondents-Claimants by way of compensation. Though the certified copy of the judgment and award was ready on 21/5/2012, the same was collected only on 5/6/2012. There is no explanation in this entire civil application why the Applicant took more than 13 months in filing the present first appeal after collecting the certified copy of the impugned judgment and award.

7. Our High Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice just because the applicant happen to be a Corporation.
8. The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation.
9. Our High Court in the matter of **Special Land Acquisition Officer & Anr. Vs Jose Prezares De Piedade Pinto, 2006(2) Bom.C.R 773** held that delay caused due to movement of file from one table to another cannot be a reason for condonation of delay.
10. The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.
11. The Apex Court in the matter of **Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara & Anr, 2009(3) SCC pg 525** held that while dismissing an Appeal on the ground of limitation, going into the merits of the case is not allowed.
12. The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient

cause, Court should not condone the delay.

13. The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

14. Recently, the Apex Court in the matter of Esha Bhattacharjee Vs. Managing Committee of **Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay needs to be rejected.

15. Considering the reasons disclosed by the Applicant in civil application and abovementioned authorities, I am of the opinion that the Applicant failed to make out sufficient cause for condonation of delay of 1 year and 33 days in filing the present first appeal. Hence, the civil application stands rejected.

[K.K. TATED, J.]