

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

**CIVIL APPLICATION NO.90 OF 2015
IN
FIRST APPEAL (ST). NO.29026 OF 2014**

National Insurance Co. Ltd. .. Applicant

Vs.

Ajaj Iqbal Shaikh and Anr. .. Respondents

Ms.Urmila K. Sanil for the applicant

**CORAM : K.K.TATED, J.
DATED : 06/02/2015**

PC:

1 Heard the learned counsel for the applicant.

2 This application is preferred by Insurance Company for condonation of 549 days delay in filing First Appeal challenging the judgment and award dated 1.1.2013 passed by MACT, Nasik in MACP No.849 of 2007 by which the Tribunal awarded sum of Rs.15,000/- to the respondents claimants with future interest @ 6% p.a. from the date of filing of petition till realisation of the amount by way of compensation.

3 The learned counsel for the applicant submits that as soon as

the impugned award passed by the Trial Court they immediately applied for certified copy on 4.1.2013. Those were ready and collected by them on 16.1.2013.

4 The learned counsel for the applicant submits that initially they decided not to challenge the order passed by the Tribunal. Thereafter the concerned Officer took a decision to challenge the same. But the applicant were under an impression that First Appeal is not maintainable since the amount of award is less than Rs.25,000/-. Hence, they preferred Writ Petition No.8043 of 2013 in this court on 2.5.2014. That Writ Petition was withdrawn by them on 27.8.2014 and thereafter, they filed the present First Appeal in this court on 14.10.2014.

5 The learned counsel for the applicant submits that by mistake they filed Writ Petition and therefore there is a delay in preferring the present First Appeal in this court. She further submits that the applicant has good chance of success in the present proceeding. She submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. She submits that in the interest of justice, this Honourable Court be pleased to condone the delay in preferring the present First Appeal challenging the judgment and award dated 1.1.2013 passed by MACT, Nasik in MACP No.849 of 2007.

6 I have heard the learned counsel for the applicant at length. In the present proceeding, in the accident which took place on 1.8.2007 the respondent claimant suffered injuries. Because of that, he was

admitted in the Sanjiwani Hospital at Nasik for four days. He spent more than Rs.20,000/- towards medical expenses. The respondent claimant was doing business and earning Rs.6,000/- per month. On the basis of evidence on record, the trial court awarded sum of Rs.15,000/- with 6% interest to the respondent claimant by way of compensation. The same is challenged by the applicant Insurance Company.

7 In the present proceeding, the certified copy of impugned judgment and award were ready and collected by the applicant on 16.1.2013. Thereafter they filed Writ Petition in this court on 2.5.2014. There is no explanation in the present Civil Application why the applicant took more than 15 months to file the Writ Petition. The Applicant in paragraph 4 of the Civil Application stated that the applicant took some time to draft the appeal and prepare the cheque to deposit requisite amount under section 173 of the Motor Vehicles Act and arrange the court fees. Paragraph 4 of the Civil Application reads thus:

“4. It took some time to draft the appeal, prepare the cheque to be deposited U/s.173 of M.V.Act and arrange court fees. The appeal is filed immediately after receiving court fees, and cheque for Rs.7,500/- to be deposited U/s.173 of the M.V.Act. Therefore, there is a delay of days.”

8 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.

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 **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.

12 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.

13 Recently, the Apex Court in the matter of **Esha Bhattacharajee 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 be rejected.

14 Bare reading of the Civil Application shows that applicant failed to show sufficient cause for delay from 16.1.2013 to 2.5.2014.

15 In the present matter, the amount is just Rs.15,000/-. Considering these facts and the law declared by the Apex Court, I am of the opinion that the applicant failed to show sufficient cause. Hence, Civil Application is dismissed.

16 Appellant is entitled to withdraw the amount if any deposited by them in the Registry of this court, with accrued interest.

(K.K.TATED, J.)