

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

**CIVIL APPLICATION NO.437 OF 2014
IN
FIRST APPEAL (ST) NO.34872 OF 2013
WITH
CIVIL APPLICATION NO.438 OF 2014
WITH
FIRST APPEAL (ST). NO.34872 OF 2013**

Shri Pandharinath Kondiba Walunj .. Applicant

vs.

Shri Kailas Ramchandra Yeole and Anr. .. Respondents

Mr.Bharat Gadavi i/b Mr.Telesh Dande for the applicant

None for the respondents

**CORAM : K.K.TATED, J.
DATED : 17/07/2015**

PC:

- 1 Heard the learned counsel for the applicant.
- 2 None for the respondents though duly served.
- 3 This application is preferred by owner of the Vehicle (original opponent) for condonation of 760 days delay in filing First Appeal challenging the award dated 11.8.2011 passed by MACT, Pune in MACP No.552 of 2008.
- 4 In an accident which occurred on 14.6.2007, respondent

claimant lost his only son, Dattatraya Kailas Yeole who was 21 years old. On the date of accident, he was earning Rs.5000 per month as per the contention of the claimants. Hence, the claimants filed application under section 166 of the Motor Vehicles Act for compensation of Rs.3.0 lacs. In that application, the applicant was duly served but no one appeared on behalf of him in the proceeding. Hence, the Tribunal passed ex-parte award dated 11.8.2011 holding that the claimants are entitled sum of Rs.2,43,500/- with 9% interest p.a. by way of compensation.

5 The learned counsel for the applicant submits in same accident applicant also lost his son Machindra and because of that, the applicant went under depression for almost 4 years. He submits that though summons were duly served in MACP No.552 of 2008, because of depression applicant was not in a position to take appropriate steps. He submits that applicant learnt about the award passed by Trial Court on 22.5.2013 when copy of summons in Execution Proceeding No.61 of 2012 was served on him. He submits that thereafter applicant immediately contacted Advocate and as per his advice, applied for certified copy of judgment and award on 26.8.2013. He submits that certified copies were ready on 24.9.2013 and thereafter, applicant filed the present First Appeal in this court on 9.12.2013.

6 The learned counsel for the applicant submits that because of depression, applicant was not able to take appropriate steps either to appear before the Trial Court or to file present First Appeal in this court within time. He submits that the applicant has good chance of success in the present proceeding. He submits that in the interest of justice,

this Hon'ble Court be pleased to condone the delay in preferring the First Appeal and matter be heard on its own merits. He submits that if delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant.

7 I have heard the learned counsel for the applicant at length. Though respondent are duly served, no one appeared on behalf of them when the matter was called out.

8 The reason given by the applicant in paragraph 2 and 4 of the Civil Application for delay is his depression and want of knowledge to take appropriate steps to safeguard his rights. It is to be noted that though the applicant in paragraph 2 stated that he went under depression for almost 4 years, not a single medical certificate is placed on record. It is to be noted that though the applicant received certified copy of impugned judgment and award on 24.9.2013, First Appeal is filed in this court after more than 2 ½ months. There is no explanation in Civil Application why the applicant took more than 2 ½ months to file First Appeal in this court from the date of receipt of certified copy.

9 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.

10 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.

11 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.

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 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.

15 Considering the submissions made by the learned counsel for the Applicant, the reasons disclosed in paragraph 2 and 4 of the Civil Application and the law laid down by our High Court as well as the Apex Court in the above mentioned authorities, I am of the opinion that applicant failed to justify to allow the present Civil Application for condonation of 760 days delay in filing the First Appeal. Hence, Civil Application stands rejected.

16 In view thereof, nothing survives in the First Appeal.

Registration of First Appeal stands rejected.

17 In view thereof, nothing survives in the Civil Application No.438 of 2014 for stay. Civil Application is dismissed as infructuous.

(K.K.TATED, J.)