

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 CA/5378/2015 IN FAST/19765/2014

SANGITA BALASAHEB THORAT
VERSUS
ASLAM ALTAF SHAIKH AND OTHERS

...
Advocate for Appellant : Mr S S Dixit
Advocate for Respondent 2 : Mr A G Kanade

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CORAM : V.K. JADHAV, J.
Dated: March 18, 2016

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PER COURT :-

1. Heard the learned counsel for the applicant and learned counsel for respondent no.2.

2. The learned counsel for the applicant submits that, after demise of the husband the applicant filed the motor accident claim petition along with her children and widowed mother-in-law. Her children are taking education and she is the only earning member of the Family now. Furthermore, she is also suffering from certain disease relating to the spinal cord. Since she was the only person looking after the litigation, even though her counsel informed to her that claim was partly allowed, she could not file the appeal within time due to many difficulties such as financial difficulty, her illness etc. The learned counsel submits that, delay is not intentional one, and she was prevented from filing the appeal

within time for the reasons as stated above. In the alternate, the learned counsel submits that the applicant alongwith other claimants are ready to waive the interest of the period sought to be condoned by way of this application, in the event, if this appeal is allowed on merit.

3. Learned counsel for respondent no.1 is absent.

4. Learned counsel for respondent no.2 has strongly resisted the application. Learned counsel submits that, there is inordinate delay in filing the appeal and the same is not explained. Learned counsel submits that, the applicant has two major sons and even then, the appeal was not filed within the period of limitation. Hence, civil application for condonation of delay may be rejected.

5. It appears that, after demise of the husband, the applicant filed claim petition alongwith her sons, daughter and widowed mother-in-law. Though sons are major, they are still taking education. Even daughter is also taking education. Thus, the applicant is the only person looking after the litigation. Furthermore, the applicant is suffering from certain disease relating to spinal cord. The applicant has also produced medical certificate to that effect.

6. In view of this, I am inclined to condone the delay. The applicant alongwith other claimants shall not claim any interest of the period for which the delay sought to be condoned, in the event, if the appellant succeeds in the appeal on merit. Hence, following order.

ORDER

- I. The application is hereby allowed.
- II. Delay of 1270 days caused in filing the appeal is hereby condoned, on condition that, the applicant alongwith the other claimants shall not claim any interest of the period for which the delay sought to be condoned, in the event, if the appellant succeeds in the appeal on merit.
- III. Civil Application accordingly disposed of.

(V.K. JADHAV, J.)

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aaa/-