

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

CIVIL APPLICATION NO.1796 OF 2016

ALONGWITH

CIVIL APPLICATION NO.1797 OF 2016

IN

FIRST APPEAL STAMP NO.11133 OF 2016

Shashikala Shivajirao Patil and others

.. Applicants

Versus

Divisional Manager, New India Assurance

Co. Ltd. and another

.. Respondents

**Mr. Sandesh Shukla i/by Mr. Santosh Sawant for the Applicants/
Appellants.**

**Mr. Madhukar Kalzunkar i/by Navdeep Vora & Associates for the
Respondent Nos.2 and 3.**

CORAM : R.M. SAVANT, J.

DATE : 24th JUNE 2016

PC.

1. The above Civil Application has been filed for condonation of delay of 3 years and 240 days in filing the above First Appeal. By the above First Appeal, the judgment and order dated 05.05.2012 is sought to be challenged. The reasons for the said huge delay of 3 years and 240 days find a place from paragraph 5 onwards in the Civil Application. It has been stated in paragraph 5 that by the judgment and order dated 05.05.2012

the MACT has held that the Respondent No.4 as well as the Applicants are jointly and severally liable to pay compensation to the claimants. The findings of the Trial Court are sought to be questioned in paragraph 6 in the light of the second charge-sheet which was filed in the CR registered against the driver. It has been also stated in paragraph 6 that the notice of the First Appeal No.1518 of 2012 filed by the claimants was served upon the Applicant No.3 by publishing in daily Lokmat Kolhapur on 14.08.2015 as she is a resident of Canada. It has been stated in paragraph 7 that the Applicant No.1 was suffering from illness and stress related issues which limited her movement. It has further been stated that Applicant No.1 has undergone a major surgery of the spine in Apple Saraswati Hospital, Kolhapur. Significantly, in the said paragraph when the Applicant No.1 got knowledge of the impugned judgment and order has not been stated. Thereafter in paragraph 8 it has been stated that the Applicants sought to acquire knowledge of the judgment and the proceedings from the Respondent No.4 however since the Respondent No.4 was suffering from certain health problems he could not provide the said information. Thereafter it is sought to be summed up in paragraph 9 that no negligence, inaction or want of bonafides could be attributed to the Applicants for the delay in filing the First Appeal as the Applicant No.1 has taken all efforts to contact Respondent No.4 who has been battling

debilitating physical illness. The condonation of delay is also sought on the ground that the First Appeal filed by the claimants being First Appeal No.1518 of 2012 is already pending in this Court. The above Civil Application has been opposed to on behalf of the claimants by filing affidavit in reply and the reasons mentioned in the Civil Application are sought to be questioned. It is the case of the claimants that the reasons mentioned in the Civil Application do not constitute sufficient cause. It has further been stated that the Applicants have not participated in the proceedings whilst they were going on before the Trial Court and have also not taken steps to take proper legal recourse after the Tribunal decided the matter on 05.05.2012.

2. Heard the Learned Counsel for the parties.

3. The Learned Counsel Mr. Sandesh Shukla appearing for the Applicants would reiterate the case of the Applicants as stated in the Civil Application. The Learned Counsel would contend that the Applicants were solely relying on the Respondent No.4 and therefore did not deem it appropriate to take immediate steps to file the First Appeal, as they were labouring under an impression that their interest would be protected by the Respondent No.4. The Learned Counsel would contend that in the light of the fact that the First Appeal filed by the claimants being First

Appeal No.1518 of 2012 as also the First Appeal filed by the Respondent No.4 is pending in this Court, the delay of 3 years and 240 days delay in filing the First Appeal should be condoned.

4. Per contra, the Learned Counsel Mr. Madhukar Kalzunkar appearing for the claimants would oppose the application and would contend that the grounds made out in the Civil Application can hardly constitute sufficient cause so as to entitle the Applicants for condonation of the said huge delay. It was the submission of Mr. Madhukar Kalzunkar that the Applicants took steps only after the execution application was filed by the claimants as otherwise they had kept themselves away whilst proceedings were pending before the Tribunal.

5. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue is as to whether discretion is required to be exercised in favour of the Applicants. It is well settled that in matters of condonation of delay a highly technical and pedantic approach should be eschewed and an approach which furthers the cause of substantial justice should be adopted. It is on the touchstone of the said dictum that the instant case would have to be considered. There is no dispute about the fact that the Applicants herein though parties to the proceedings before the Tribunal though served had failed to appear before

the Tribunal and therefore the said proceedings proceeded ex-parte against them. The said proceedings ultimately culminated in the Award passed by the MACT, Satara dated 05.05.2012. The Applicants thereafter it seems have also not taken any steps to even acquire knowledge as to the Award passed by the Tribunal. Significantly, as indicated above, in paragraph 7 of the Civil Application the date when the Applicants have acquired knowledge of the Award passed by the Tribunal has not been mentioned. The aforesaid facts therefore make it clear that the conduct of the Applicants was most casual and callous. The reasons which have been mentioned by the Applicants in the above Civil Application namely of the Applicant No.1 having undergone surgery as also that the Applicants could not get necessary information from the Respondent No.4 can hardly be the reasons to seek condonation of the said huge delay of 3 years and 240 days. It is required to be noted that the Applicants have not stated as to when the Applicant No.1 has undergone surgery or the so called debilitating illness the Respondent No.4 to the Appeal suffers from. Most importantly they have not stated as to when they have acquired knowledge of the order. The instant case is a case where there is delay of 3 years and 240 days and unless the said delay is properly explained, discretion cannot be exercised in favour of the Applicants. It is also well settled that in matters of condonation of delay the prejudice that is likely

to be caused to the other side is also one of the relevant considerations. Condoning the delay at this point of time that is after 3 years and 240 days would obviously cause prejudice to the claimants, as they would be confronted with another First Appeal and that too belatedly. In my view, therefore, no case for grant of the relief of condonation of delay is made out. The Civil Application is accordingly rejected.

6. In view of the dismissal of the Civil Application for condonation of delay in filing the First Appeal, the First Appeal does not survive and to accordingly disposed of. The Civil Application also filed for stay to accordingly stand disposed of.

[R.M. SAVANT, J]