

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

**CIVIL APPLICATION NO.70 OF 2015
IN
FIRST APPEAL (ST) NO.31036 OF 2014**

Smt.Indrava Kanchappa Natekar and Ors. .. Applicant

vs.

Shri Raju Pandurang Kavare .. Respondent

Mr.Abhaysing A. Shinde for the applicant

Mr.S.A.Rajeshirke for the respondent nos.1 and 2

**CORAM : K.K.TATED, J.
DATED : 14/01/2016**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by original claimants for condonation of 5 years 104 days delay in filing First Appeal challenging the judgment and award dated 13.4.2009 passed by MACT, Jaisingpur at Jaisingpur in MACP NO.61 of 2007 by which the applicants claim petition stands rejected.

3 The learned counsel for the applicant submits that applicant filed application for certified copy of impugned judgment and award on 29.4.2009. Same was ready and collected on 27.5.2009. He submits that thereafter immediately applicant contacted the advocate who

appeared in the Trial Court. Advocate in the Trial Court forwarded papers to the advocate who appears in High Court, Mumbai. Advocate at Mumbai prepared the First Appeal as well as the application and forwarded the same to the advocate who appeared in the Trial Court for affirmation. He submits that those papers were received in the office of Advocate at Mumbai but was same was misplaced on the part of clerk. He submits that these facts were learnt by the Advocate sometimes in the year 2014. Thereafter, advocate at Mumbai tried to find out the name and address of the applicant, because he had approached him through the advocate who appeared in the Trial Court. He submits that in the meanwhile, advocate who appeared in the Trial Court expired. Hence, there was delay on the part of the applicant to contact the advocate at Mumbai in the present First Appeal. He submits that applicant has good chance of success in the present proceeding. He submits that if delay is not condoned, irreparable loss and injury will be caused to them.

4 On the other hand, the learned counsel for the respondent vehemently opposed the present application. They filed Affidavit in reply. He submits that applicant has not shown sufficient cause for delay of more than 5 years. He submits that in additional affidavit, applicant has given the reason which were after thought. Hence, there is no question of entertaining the present First Appeal which is barred by law of limitation. He submits that if inordinate delay is condoned, irreparable loss will be caused to the respondent.

5 I have heard both the sides at length. It is to be noted that in the present proceeding, though certified copy were collected by the

claimant on 27.5.2009 First Appeal filed in this court on 21.5.2014. Though the applicant in Civil Application gave the reason that the concerned clerk misplaced the papers and proceeding of the present matter, his affidavit is not filed on record. Apart from that, applicant has not made any enquiry for more than 5 years for his matter.

6 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.

7 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.

8 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.

9 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.

10 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.

11 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 be rejected.

12 Considering the reasons disclosed by the applicant and the law declared by the Apex Court, I do not find any sufficient cause is disclosed by the applicant for condonation of more than 5 years delay in filing First Appeal. Hence, Civil Application is rejected.

13 In view thereof, First Appeal (ST). No.31036 of 2014 does not survive. Registration of First Appeal is rejected.

(K.K.TATED, J.)