

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

928 CIVIL APPLICATION NO. 9666 OF 2017 IN FAST/4357/2014
WITH CA/1791/2014 IN FAST/4357/2014
WITH CA/1792/2014 IN FAST/4357/2014

VIKRAM CHANGDEO KALOKHE
VERSUS
ENKEY CASTALLEOY LTD. THR ITS VICE PRESIDENT AND ANR

...
Advocate for Applicant : Mr. N. C. Garud.
Advocate for Respondent No. 1 : Mr. P. V. Barde.
...

CORAM : K.K. SONAWANE, J.

DATED : 11TH AUGUST, 2017.

Order :-

Heard. Perused documents produced on record.

2. Despite service of notice, none appears on behalf of respondent No.2.

3. Learned counsel for the applicant (in C.A.No.1791 of 2014) -original appellant Enkey Castalleoy Limited submits that, appellant is intending to present an appeal under Section 30 of the Employees Compensation Act, 1923, against the impugned ex-parte Judgment and Order passed by the learned Labour Court and Commissioner for employees compensation in Application (WC) No. 16 of 2011. The learned Commissioner did not appreciate the factual aspect as well as legal issue on record in its proper prospective and committed an error. The applicant-appellant has every hope of success in appeal. The respondent

No.1 - original claimant had shown inclination for withdrawal of the application filed before the learned Labour Court to settle the dispute amicably. Therefore, the applicant-appellant could not secure its presence in the proceedings before the learned Commissioner, which resulted into ex-parte Judgment and Order in favour of respondent Vikram Changdeo Kalokhe. The learned counsel submitted that the entire compensation amount awarded by the learned Labour Commissioner has deposited before the learned Commissioner to show bonafide of the appellant. The learned counsel requested to condone the delay caused in preferring the First Appeal against the impugned Judgment and Order passed by learned Labour Court and allow the application for condonation of delay.

4. Mr. Garud, learned counsel for respondent No.1 raised objection and submits that, the notice of the application were served the applicant wife, but no response received in the proceedings. Therefore, the learned Commissioner has passed Judgment and order ex-parte. The learned counsel for respondent No.1 prayed to reject the application for condonation of delay.

5. I have given anxious consideration to the submissions canvassed on behalf of both side. Admittedly, the Judgment and order came to be passed ex-parte in absence of the

applicant-appellant. The matter pertains to the compensation arising out of accident caused with the respondent while discharging his duty at the place of his employment. Considering grounds mentioned in the application, I find that there is no impediment to condone the delay. The reasons mentioned in the application are sufficient to extend reasonable opportunity to the applicant-appellant for redressal his grievance before the concerned Appellate Forum.

6. In such circumstances, delay is required to be condoned. Accordingly, application is allowed. The delay is hereby condoned. Registry to take requisite steps for further process. The Civil Application for condonation of delay stands disposed of.

7. On registration of appeal, the same is **admitted**.

8. The learned counsel for the respondent No.1, on admission, waives notice.

9. Matter be listed for final hearing on merit on 29th August, 2017.

10. Meanwhile, the original claimant Vikram Changdeo Kalokhe (in Civil Application No. 9666 of 2017) is allowed to withdraw the amount of Rs.1,75,000/- (Rs. One Lac Seventy Five Thousand Only) from the amount deposited by the applicant-appellant Enkey Castalleoy Limited before the learned Commissioner by

way of compensation on furnishing surety bond while withdrawing the amount before the learned Commissioner.

11. If the matter in issue is not adjudicated in his favour on merit, the amount received by him (applicant Vikram Changdeo Kalokhe) in this case as compensation be refunded forthwith as and when required by the court concerned. Accordingly, application for withdrawal of amount stands disposed of.

Sd./-

[K. K. SONAWANE]
JUDGE

rrd.