

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

17. CIVIL APPLICATION NO. 14586 OF 2016
IN FAST/32834/2016

TANZEEM BEGUM ABDUL MUJAHID ALIAS MUJEEB AND ORS
VERSUS
GHAURI FAROOKHE KAMAL AND ANOTHER

...
Advocate for Applicants : Ms. A. N. Ansari
Advocate for Respondent No.2 : Mr. A. G. Kanade.

...
WITH

18. CIVIL APPLICATION NO. 14587 OF 2016
IN FAST/32839/2016

SHAIKH MAROOF SHAIKH BABU
VERSUS
GHAURI FAROOKHE KAMAL AND ANR

...

CORAM : K.K. SONAWANE, J.

DATED : 10TH OCTOBER, 2017.

Order :-

The learned counsel for applicants has tendered across the bar affidavit of service of notice to respondent No.1. The same are taken on record and marked as 'X' for identification. Applicant served notice to respondent No.1 privately by speed post and filed affidavit of service of notice with acknowledgment and postal receipt on record. Despite of service of notice, none appears for respondent No.1. Heard learned counsel for the applicant. Perused the applications and relevant documents on record. The matters are pending since year 2016 for issue of condonation of delay.

2. The learned counsel for applicant submits that, there is delay of 143 days caused for filing the appeal against impugned Judgment and Award passed by the learned Tribunal. The applicants filed claim petitions under Section 166 of the Motor Vehicles Act for compensation towards the death of deceased Mujeeb, who was the family member of applicants. The learned Tribunal appreciating the circumstances on record partly allowed the claim and awarded the compensation amount to the applicants. But, the applicants did not satisfy with the quantum of compensation, therefore, they preferred present appeals. But, there is delay caused for filing appeal within stipulated period. According to learned counsel, the delay of 143 days caused in filing the appeals against impugned Judgment and Award was not intentional or deliberate, but it caused due to unavoidable circumstances. Therefore, he prays to condone the delay.

3. As referred supra, learned counsel Mr. Kanade caused appearance for respondent No. 2, but remained absent while hearing of the present applications. Notice of applications was served to respondent No. 1 privately by Speed Post, but respondent No. 1 did not turn up to this Court. Therefore, no opportunity of hearing to them received in this applications. In such circumstances, there is no impediment to decide the applications on merit in absence of respondents No. 1 and 2.

4. Considering the attending circumstances and the reasons mentioned in the applications, I do not find any impediment to condone the delay, it would not cause any prejudice or injustice to the respondents. There is sufficient cause to allow applicants to present appeals at belated stage. In contrast, it would subserve the purpose in the interest of justice. Hence, applications for condonation of delay deserve to be allowed. In sequel, the applications stand allowed in terms of prayer clause (B). Delay caused in filing appeal against the impugned Judgment and Award is hereby condoned. Registry to take requisite steps for further process.

5. The civil applications are allowed in above terms and stand disposed of.

6. on registration of Appeal, issue notice to respondents, returnable on 05-11-2017.

7. Call for record and proceedings.

8. In addition to regular mode of service, appellants to serve the notice to respondents privately by fastest mode as may be permissible in law and file affidavit of service of notice along with tangible proof before returnable date.

[K. K. SONAWANE]
JUDGE

mtk.