

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO.694 OF 2015****IN****STAMP NUMBER MAIN NO.3071 OF 2015**

National Insurance Co. Ltd.,
Through its Divisional Manager
Mr. Sudhir Vyas.

...Applicants

V/s

Shri Babi Sitaram Harmalkar & Anr.

....Respondents

Ms. Y. Mandrekar, Advocate for the Applicants.
Shri V. Parsekar, Advocate for the Respondent No.1.

CORAM : NUTAN D. SARDESSAI, J.

Date : 30th JUNE, 2017

ORDER :

Heard Ms. Y. Mandrekar, learned Advocate for the applicants and Shri V. Parsekar, learned Advocate for the respondent no.1.

2. It is the case of the applicants that on account of the delay on the part of the Advocate then dealing with the matter, the certified copy of the judgment and award dated 25/11/2011 was applied for only on 20/07/2012 and the copy collected thereafter on 4/08/2012. Thereafter the award was forwarded to their Pune Regional Office for further action as per their internal procedure and who certified that it was fit

for filing an appeal. This procedure took about three months time and in the meantime the file was sent to Advocate Shri E. Afonso in December, 2012 to file the appeal who conveyed his unwillingness and in that process a period of two months had lapsed. Thereafter the file was sent to Advocate Shri U.R. Timble, who prepared the appeal and obtained the signature of the applicants' Officer and requested that the cheque be sent to him immediately. However, though the cheque was despatched by the applicants through courier it was either misplaced during the transit or was not received by the Advocate. The appellants were under the bonafide belief that the appeal was filed while the Advocate who had not received the cheque lost the track of the matter and the file remained in his office without an appeal being filed. It is only on receipt of the notice of execution, did the applicants request the advocate to obtain the stay of the order in the last week of September, 2015 when it was informed that the amount had to be paid in execution by 11/10/2015. It was only then that the lawyer informed that he had not filed an appeal. The delay in filing the appeal was therefore caused on account of genuine circumstances and the applicants were not guilty of delay which had therefore to be condoned.

3. This application was strongly opposed by the respondent no.1 on the premise that the delay of 1404 days in filing the appeal was not sufficiently accounted and there was gross delay and laches in filing the appeal. Though the impugned judgment and award was passed by the learned MACT on 25/11/2011 the certified copy was applied for only 8 months later on 20/07/2012. There was gross delay on the part of the applicants even in applying for the certified copy and an attempt was made to shift the burden on the advocate for their own convenience. The applicants were otherwise not diligent in pursuing the matter and the plea raised of the internal procedure of the applicants and the necessity to process the award by the Regional Office was also not valid. The applicants could not evolve their own internal procedure by ignoring the statutory period of limitation. In any event, the respondent no.1 who was the victim of the accident had suffered enough who was grievously injured and grave prejudice and hardship would be caused to him in case the delay was condoned. A plea of the cheque being misplaced in transit and therefore the filing of the appeal being delayed was also not justified. The application had therefore to be dismissed.

4. Ms. Y. Mandrekar, learned Advocate for the applicants reiterated the contents of the application and otherwise relied in **Ashok Ravji Vadodriya, Wagri V/s. Municipal Corporation of Greater Bombay [AIR 2004 Bom. 8]** to buttress her contention that the party should not be made to suffer for the lapse on the part of the advocate. Shri V. Parsekar, learned Advocate for the respondent no.1 reiterated the contents in reply and vehemently opposed the condonation of delay on the premise that grave prejudice would be caused to the respondent no.1 who had suffered enough in the vehicular accident. There was however no singular dispute on the fact that the respondent had taken a specific plea in defence in the course of the proceedings before the learned MACT that the original respondent no.1 did not possess a valid and effective driving license on the date of the accident and which would absolve them from the liability fastened on them by the learned MACT. The learned Advocate submitted that the entire amount awarded by the learned MACT in favour of the respondent no.1 in the amount of ₹18,07,000/- had been deposited by the applicants in the Court and that 50% of this amount has been withdrawn by the respondent no.1 with the leave of this Court.

5. The applicants had clearly set out that on account of the lapse by the advocate there was a delay in acquiring the certified copy of the impugned judgment and award and that thereafter on account of the internal office procedure, it took some time to process the appeal and thereafter the filing of the appeal was delayed due to the inability expressed by the then advocate to prefer an appeal. Be that as it may, it was also their case that the next advocate who was entrusted with the brief had advised the applicants to prefer an appeal and also to despatch the cheque for an amount of ₹25,000/- to present alongwith the appeal. It was also their case that this cheque was lost in transit and in the meantime the applicants were under a bonafide belief that the appeal was preferred by the said advocate while the Advocate on his part lost track to file the appeal as the cheque was not received by him. Although it was the contention of the respondent no.1 that the ground urged is basically to shift the burden on the advocate concerned, nonetheless it is not in dispute that once the matter is entrusted to the lawyer to conduct a case on behalf of the client, it is his duty to go through the matter and pursue the matter at every stage.

6. In this view of the matter and that the party should not be prejudiced by the negligence or inaction on the part of the advocate concerned who has been entrusted with the matter and considering the factual matrix and that the applicants have a good chance to succeed on merits who have otherwise shown their bonafide by depositing the entire awarded amount in this Court, i find it appropriate in the circumstances to condone the delay. Moreover, the respondent no.1 is also benefited inasmuch as he has withdrawn 50% of the amount pending the execution proceedings. Taking an overall view of the matter and the observations of this Court in **Ashok** (supra), i deem it appropriate to condone the delay which is hereby condoned. The Registry to register the appeal. Application stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

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