

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

**CIVIL APPLICATION NO.45 OF 2008
IN
FIRST APPEAL (ST) NO.29776 OF 2007
WITH
CIVIL APPLICATION NO.46 OF 2008
IN
FIRST APPEAL (ST) NO.29776 OF 2007**

Ravindra Sadashiv Lonare ..Applicant/Appellant
V/s.

Parshuram Shankar Kulkarni & Ors. ..Respondents

Mr.Balasaheb Deshmukh for the Applicant in both Civil Applications
and for the Appellant.

Ms.D.Shalini Shankar i/by Ms.Urmila Sanil for Respondent No.4.

CORAM : M. S. SONAK, J.

DATE : 06 MARCH 2017.

P.C.

1. Heard the learned counsel for the parties.
2. By this Civil Application the applicant seeks condonation of delay of about 506 days in instituting the appeal against judgment and award dated 25 April 2006 made by the MACT, Pune.
3. Till date, there is no service upon respondent No.3, the

owner of one of the vehicle involved in this accident. Although, the matter was instituted in the year 2007, the same has been delayed on account of failure to take diligent steps to serve all the respondents. Taking into consideration that the matter relates to the year 2007, it is not possible to grant any further indulgence in the matter of service.

4. Mr.Deshmukh, the learned counsel appearing for the applicant submits that the applicant had sold the vehicle, which is alleged to have been involved in the accident way back on 31-01-1994. The accident took place in the year 1996. Therefore, it is the case of the applicant that the applicant is not at all responsible or liable for the accident or any claim arising therefrom. Mr.Deshmukh submits that the applicant is a poor person and had to take hand loan even for purposes of arranging the amount of Rs.25,000/- which is required to be deposited as a pre condition for institution of this appeal. Mr.Deshmukh submits that even the advocate of the applicant was not quite co-operative and this was another cause for the delay. Mr.Deshmukh submits that the delay was caused on account of the financial condition of the applicant and the consequent non-cooperation by his advocate.

5. If the application for condonation of delay is perused, then, in the prayer clause, the quantum of delay is left blank. However, it is clear that the delay in this case is of over 500 days. The reasons set out in the Civil Application are again that the financial condition of the applicant is weak and the applicant received not much cooperation from his advocate before the MACT.

6. Both the reasons are quite vague and insufficient to explain the enormous delay of 506 days in instituting the appeal. The applicant had contested the proceedings before the MACT. The applicant was very much aware that the impugned award dated 25 April 2006 which held him liable to the extent of at least 15%. However, no appeal was filed for over 500 days. The statement that the Advocate before the MACT was not co-operative is too vague to deserve any acceptance. The aspect of poverty, in the facts and circumstances of the present case is unverifiable and deserves no acceptance.

7. It is the case of the applicant that he sold the vehicle on 13-01-1994 for an amount of Rs.2,36,775/-. It is the case of the applicant that he received an amount of Rs.62,362/- in cash and the rest, in cheque. In the course of the evidence laid by the applicant,

there was no evidence produced on record to establish that the cheque amount was actually paid by Ms.Pramila Pasalkar, to whom the applicant has alleged to have sold the vehicle. However, if it is the case of the applicant that he has received an amount of Rs.2,36,775/- some years ago, then, it cannot be said that he had no means to institute the appeal.

8. The applicant continued to be the registered owner as on date of the accident. The issue as to whether he had actually transferred the vehicle to Ms.Pramila Pasalkar or not is not so much relevant qua the claimants particularly because the applicant continued to be registered owner in respect of the vehicle. From the written statement of the applicant, it is seen that the applicant has chosen to make statement with regard to the actual accident. The applicant never bothered to summon the driver of the vehicle as his witness.

9. The claimants, who were aged 62 and 55 years when they lodged their claim, have lost their son aged about 30 years on account of the unfortunate accident. The rights which vests in the claimants cannot be easily disturbed or rendered uncertain, on account of the delay particularly because there is no valid reason for

delay in the institution of this appeal. The applicant has also not taken proper steps to serve the respondents as a result of which even this Civil Application is being taken up almost 11 years after its institution. Even today some of the respondents remain unserved. On account of the pendency of the matter, the claimants have been deprived of the compensation awarded by the MACT. Upon cumulative consideration of the cause shown in the Civil Application, it cannot be said that any sufficient cause has been made out for condonation of delay. Accordingly, the Civil Application is dismissed. As a consequence, the appeal itself be dismissed.

10. The applicant, obtained ad-interim relief from this Court on the condition that he will deposit an amount of Rs.1 lakh before the concerned MACT. However, upto now, it appears that only an amount of Rs.50,000/- has been deposited. From the aforesaid, it is quite clear that the appeal was instituted after enormous delay and thereafter not pursued at all only with a view to deprive the claimants of their compensation. This inference is further supported by the circumstance that the applicant obtained ad-interim reliefs but thereafter failed to comply with the condition, subject to which ad-interim relief was granted. The claimants shall

be entitled to withdraw the amount deposited before the MACT along with interest that may be accrued thereon unconditionally. The application in fact deserves to be dismissed with cost. However, this Court is not influenced on imposing any cost on the appellant.

(M. S. SONAK, J.)