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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4174 OF 2014
WITH
CIVIL APPLICATION NO. 4175 OF 2014
WITH
CIVIL APPLICATION (ST) NO. 32257 OF 2016
IN
FIRST APPEAL (ST) NO. 32223 OF 2014
WITH
FIRST APPEAL (ST) NO. 32223 OF 2014

Bajaj Allianz Gen. Insurance Co. Ltd. ...Applicant/Appellant
vs
Rashid Habib Khan & Anr. ...Respondents.

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Mr M.M.Sathaye for the Applicant/Appellant in CAF No.4174 of 2014 and CAF No.4175 of 2014 and original appellant.
Mr Ramesh Chavanke for original Respondent No.1 and Applicant in CAF(ST) No.32257 of 2016.

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CORAM : M. S. SONAK, *J.*
27 FEBRUARY, 2017

P.C. :

By Civil Application No. 4174 of 2014, the Applicant – Insurance Company seeks condonation of delay of 188 days in instituting the Appeal against the Judgment and Award dated 18.3.2014 made by the Commissioner under the Employees Compensation Act, 1923.

2 In paragraph 4, the applicant has stated that there is delay of 50 days in institution of the First Appeal. However, in the prayer clause, it is stated that there is delay of 188 days in instituting the

appeal.

3 The application for condonation of delay is dated 17.6.2014 and was also verified on 17.6.2014. If the date 17.6.2014 is taken into consideration, then it is possible that the delay is of only 50 days as stated in paragraph 4 of the Civil Application. However, it transpires that though the application for condonation of delay was prepared and verified on 17.6.2014, the same was filed together with the Memo of Appeal on 8.12.2014.

4 For the period between 17.6.2014 and 8.12.2014, there is not even whisper of explanation. The period between 17.6.2014 and 8.12.2014, in the matter of this nature, is quite substantial and without there being any explanation whatsoever in respect of this period, the application for condonation of delay cannot be allowed.

5 Mr Sathaye, the learned Counsel for the applicant, however, submits that in this case there was some delay in the matter of compliance with the provisions contained in Section 30 of the Employees Compensation Act, 1923, the proviso to which provides that no appeal by an employer shall lie unless the Memo of Appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. Nothing to the aforesaid effect is stated in the Civil Application dated 17.6.2014, seeking the condonation of delay. Besides, if this is the requirement of law, then, nothing prevented the Insurance Company, from depositing the amount on or about

17.6.2014, when the Memo of Appeal and application for condonation of delay was ready, signed and even verified. It is to be noted that on the ground of pendency of this appeal, the claimants, have not been able to withdraw the compensation, even till date. There is no explanation as to what prevented the applicant from depositing the amount and comply with the provisions of Section 30(1) of the Employees Compensation Act, 1923.

6 Along with this appeal, there is no certificate as is contemplated by Section 30 of the Employees Compensation Act, 1923. Mr Sathaye, after this was pointed out by the learned counsel for the Claimants, submits that there is no requirement of such certificate when the appeal is filed by the Insurance Company. If this is so, then the explanation which was attempted to be given by Mr Sathaye across the bar and not stated in the application seeking condonation of delay and is ex-facie mala-fide and false. If the understanding of the Insurance Company is that no certificate was required as contemplated by Section 30 of the Employees' Compensation Act at the stage of institution of the appeal, then, there is absolutely no explanation as to why the Appeal and the Application for condonation of delay was not lodged on 14.6.2014, on which date, it was ready and verified.

7 Even otherwise, the explanation for 50 days delay, is set out in paragraph 5 of the Civil Application, which reads thus :-

> "5) The Applicant states that the said delay is neither

> intentional nor deliberate. The Applicant company most sincerely wants to challenge the impugned Judgment and Award by filing and prosecuting the present First Appeal. The delay is caused mainly because of the corporate procedure, which requires obtaining legal opinion and sending it for approval from the decision making authorities. The intervening summer vacations have also contributed to delay in getting legal opinion. The Applicant states that it was also trying to reach a compromise in the matter but unfortunately it could not be worked out. Since it has a good case of defence in the matter, the Applicant has decided to file and prosecute the present appeal. It is therefore necessary in the interest of justice to condone the delay. If the delay is not condoned then Applicant's right to file substantive First Appeal under Employees' Compensation Act, for challenging the illegalities in the impugned Judgment and Award will be lost forever. In that case, the impugned Judgment and Award, which is illegal and unjust for various grounds specifically set out in Appeal Memo, will become final and binding on the Applicant The Applicant will suffer irreparable loss in that case. On the other hand, if the delay is condoned, no loss or injury will be caused to the Respondents, because in that case, the present First Appeal will be heard for admission on its own merits. Therefore, equities lie in Applicant's favour."

8 The explanation hardly inspires any confidence. The explanation is completely vague. To show that the delay is caused mainly because of "**Corporate Procedure**" is not an acceptable explanation, as a matter of routine. This is a private Insurance Company and in any case, on the basis of such vague statements, the condonation of delay cannot be applied for. As noted earlier, the explanation in paragraph 5 is only with regard to the delay of 50 days. However, in fact, the delay is of 188 days and there is no explanation whatsoever in respect of this additional period stated in the Civil Application.

9 Mr Sathaye was requested to state the grounds on which the appeal has been instituted. He submits that in this case, the deceased was not at all an employee of Respondent No.2 (owner of the vehicle – insurer). He submits that the owner of the vehicle also issued one letter to this effect. He submits that the private investigator was engaged by the Insurance Company, who has been examined before the Commissioner also stated that the owner had informed the Investigator that the deceased was not an employee, and even issued a letter to this effect. On such basis Mr Sathaye submits that the Insurance Company could never have been made liable in the matter of this nature.

10 The impugned award indicates that the owner was examined before the Commissioner. He filed his affidavit-in-reply of Examination-in-Chief. However, when it came to cross-examination, he declared that he knows nothing about the matter. In such circumstances, the impugned award records that several opportunities were offered to the Insurance Company to produce proper evidence. However, despite availing the same, the Insurance Company failed to produce the proper evidence.

11 Mr Chavanke, the learned advocate for the claimants points out that the Insurance Company took no less than 30 adjournments for the purpose of producing the evidence. He also handed over xerox copy of Roznama which contains the date on which the matter was adjourned.

12 *Prima facie* there is merit in what Mr Chavanke contends. Mr Sathaye, however, submits that since the certified copy of the Roznama has not been produced, no credence should be given to this submission. Mr Chavanke is the officer of this Court and this Court has no doubt that the xerox copy of the Roznama produced by him corresponds with the Roznama maintained before the Commissioner.

13 Be that as it may, in the impugned award it is clear that several opportunities were given to the Insurance Company, but the Insurance Company failed to produce any evidence to rebut the evidence lead on behalf of the owner on the aspect of employer – employee relationship. In any case, this is a matter for appreciation of evidence and gives rise to no substantial question of law.

14 For the aforesaid reasons, the Civil Application and consequently the Appeal is dismissed with costs assessed at Rs.10,000/-. The Civil Application for stay does not survive and the same is disposed of accordingly.

(M. S. SONAK, J.)