

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (F) NO.114 OF 2017
IN
FIRST APPEAL STAMP NO.23917 OF 2016

(Cholamandalam MS General Insurance Co. Ltd., thr. Incharge, Nagpur Vs. Smt.
Ruksana Parvin Sayyed Hasan and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri A.J. Pophaly, Advocate for Appellant.
Shri B.N. Mohta, Advocate for Respondent No.1.

CORAM: DR. (SMT.) SHALINI PHANSALKAR-JOSHI, J.
DATE: 30th JUNE, 2017.

This is an application seeking condonation of delay of 39 days in filing the first appeal under Section 30 of the Workmen's Compensation Act.

As per the reasons given in para 3 of the application, in securing the administrative approval and making arrangement for deposit of the amount of compensation, the time was consumed and hence, there is delay in filing the appeal.

Learned counsel for the respondent No.1 has strongly resisted this application vide the reply, contending that the reasons given are in the application vague, not *bona fide* and hence, such delay should not be condoned.

To substantiate this submission, learned counsel for respondent No.1 had relied upon two judgments of Karnataka High Court, one in the case of *Executive Engineer No.2 Canal and another vs. A. Satish Kumar* reported in 2001 All India High Court 651 and another in the case of *The Spl. Land Acquisition Officer, U.K.P. v. Rayanagouda, since deceased by his L.Rs.* reported in 2001 All India High Court 399.

However, on perusal of both these judgments it can be seen that in the decision there was inordinate delay of 565 days and hence, considering the vague explanation offered by the appellant, the delay was not condoned; whereas, in the second decision also having regard to the substantial length of the delay of about two years and more, the High Court refused to condone the delay.

As against it, in the instant case, the delay is of only 39 days and that too is properly and satisfactorily explained in para 3 of the application by giving all the necessary details, as to when the proposal was forwarded, when the amount was deposited, when the sanctioned was received and what was the reason for delay in filing the appeal.

Needles to state that as per the settled legal position also, the delay in filing of the appeal, if it is due to *bona fide* reason and not intentional or *mala*

fide, then such delay needs to be condoned, even, if it may be on purely administrative grounds. The delay on account of administrative reason is also required to be considered with leniency when sufficient details are given. No cause should be thrown out of the Court at the threshold itself, especially on technical ground, without giving opportunity to the litigant to prove his case on merits.

Herein the case, the appellant is having the statutory right of filing the First Appeal and the appellant should not be deprived from the said opportunity, merely on technical ground, especially having regard to the fact that the appellant has already deposited the entire amount of compensation in the Court and in case of any delay the respondent No.1 the claimant can be withdraw the same with permission of the Court.

Therefore, in my considered opinion, as sufficient cause is made out in para 3 of the application, having regard to the small duration of the delay which is only of 39 days, this Court, taking a liberal view, as expected in such matters is condoning the delay by allowing this application, with no order as to costs.

The application is disposed of.

First Appeal Stamp No.23917/2016:

The appellant to file private paper-book within a period of six months, after the receipt of R & P.

Civil Application (F) No.115/2017:

As per the order passed by this Court on 20.01.2017, the appellant has deposited the entire amount of compensation in the Court. Hence, the earlier ad interim order of stay is extended till final disposal of this appeal. Appeal be kept for admission.

JUDGE