

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

CIVIL APPLICATION NO.1349/2017 IN
SECOND APPEAL ST. NO.24418/2017

Sarda Transport through its Proprietor Kamalkishor Ramprasad Sarda .vs.
United India Insurance Company Ltd. & anr.

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

Court's or Judge's orders.

Mr. Alok Daga, Advocate for applicant.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 17, 2017

1. This is an application for condonation of delay in filing the second appeal. Delay caused is of 370 days.

2. Heard Mr. Daga, learned counsel for the applicant. The applicant is original defendant. The original plaintiff is non applicant no.1-United India Insurance Company Ltd., a subsidiary of General Insurance Company of India, having its divisional office at Old Cotton Market, Rajasthan Press Building, Akola and non applicant no.2 is plaintiff no.2-M/s Omprakash Shivprakash, through its partner Prakash Kaluram Agrawal. A suit for recovery was filed against the present applicant. The suit was contested by the present applicant on various grounds. After examining the witnesses by the plaintiff, the learned trial Court partly decreed the suit for recovery against the present applicant. By the said decree,

the learned trial Court ordered that the plaintiff no.1 is entitled to recover the amount of Rs.4,05,915/- along with interest at 10% p.a. from 19.08.1996 till the filing of the suit. The future interest at the rate of 6% per annum was also granted in favour of the plaintiff from the date of filing of the suit till its full realization. Being dissatisfied with the said judgment and decree, the present applicant filed Regular Civil Appeal No.116/2012 and the learned Principal District Judge, Akola on 22.07.2016 dismissed the appeal with costs.

3. To challenge the said judgment and decree, it was expected from the applicant to file an appeal within the stipulated period. However, the appeal was not filed within the stipulated period therefore at the time of presentation of the appeal, an application for condonation of delay is filed. According to the application and submission of Mr. Daga, learned counsel for the applicant, after the judgment and decree passed by the appellate Court on 22.07.2016, the present applicant contacted his counsel who appeared in the regular civil appeal and he informed the applicant that now nothing is required to be done. Believing his advice, the applicant has not taken any steps. It is also stated in the application and also it is the submission of the learned counsel for the applicant that on 09.11.2017, the bailiff had come to the office of the applicant for attachment and thereafter the present second appeal is filed.

4. The application for condonation for delay is as vague as it could be. The applicant has not stated as to when he has contacted his counsel and when the counsel has given advise to him not to prefer an appeal. Further, there is no affidavit of the said advocate who gave the advise not to file an appeal.

It is normally not believable that an advocate will give such an advise to his client not to file an appeal before the higher forum when the decision is given against his client.

5. Further, the present applicant is not a layman. He is a businessman and runs a transport company. Therefore, it is really unbelievable that a businessman who understands the intricacies of the day-to-day life will readily and blindly accept such an advise and on his advise choose not to prefer an appeal, keep mum and remain silent till the bailiff comes to his office for attachment of his property.

6. Further, even according to the application and as per the submission of the counsel for the applicant, when the bailiff had come to the office of the applicant, that time the applicant has issued cheque of Rs.9,80,313/- dated 09.11.2017. However, it is the submission and assertion in the application that at the time of issuance of said cheque, no sufficient amount was available in his bank account. This particular aspect shows that the

present applicant is not a bona fide litigant. He, only to avoid the course of law, has issued a cheque to the bailiff who had come to his office for attachment of the property, knowing fully well that he is not having any amount in his bank account and still had issued the cheque. This type of attitude on the part of the applicant is nothing but to obstruct the course of justice. The applicant, it appears that on 15.11.2017 has filed the present appeal and application. Thus, the issuance of the cheque was not with a bona fide intention but it was with a view to dodge the process of law. Surely, these types of litigants are not entitled to any discretionary relief especially when the applicant is not a layman and is a businessman.

7. No case is made out for condonation of delay. Hence the present application for condonation of delay is dismissed with costs of Rs.10,000/-. Consequently registration of the second appeal is refused.

The applicant to deposit costs of Rs.10,000/- within two weeks from today else the Collector, Adilabad, Andhra Pradesh is directed to recover the said amount of costs as arrears of land revenue after following the process of law and submit the report to this Court.

JUDGE