

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**942 CIVIL APPLICATION NO. 3823 OF 2018
IN
FAST/5755/2018**

Vijay Rangnath Pawar

Age : 30 Years, Occ. :

Agriculture, R/o :

Usthal Khalsa, Taluka :

Newasa, District :

Ahmednagar.

.... APPLICANT/

[ORI. OPP. NO.3 IN M.A.C.P.]

VERSUS

1. Leelawati Sonyabapu Salunke

Age : 68 Yrs., Occ. Household,

R/o : Ekwadi, Harigaon, Tal.:

Shrirampur, Dist.: Ahmednagar.

.... RESPONDENT/

.... [ORI.CLAIMANT

IN M.A.C.P.]

2. Ravindra Sahebrao Bodhak

Age : Adult, Occ. Driver,

R/o : Undirgaon, Tal.:

Shrirampur, Dist.: Ahmednagar.

.... RESPONDENT/

.... [ORI.OPP. NO. 1

IN M.A.C.P.]

3. Nanasaheb Dinkar Bhosale

Age : Adult, Occ. Agril.,

R/o : Valadgaon, Tal.:

Shrirampur, Dist.: Ahmednagar.

.... RESPONDENT/

.... [ORI.OPP. NO. 2

IN M.A.C.P.]

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Mr. V.D.Sapkal h/f Mr. V.P.Autade,
Advocate for applicant.

Mr. V.P.Autade, Advocate for R – 1.

Mr. G.B.Rajale, Advocate for R – 3.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 27th JULY, 2018

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JUDGMENT :

1. The applicant/appellant – original respondent No. 3 has filed this application for condonation of 1501 days delay in filing Appeal against the Judgment and Award dated 22/10/2013 passed by the learned Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar in M.A.C.P. No. 227/2005 for the reasons set out in the application.

2. Heard learned counsel for the applicant and respondent Nos. 1 and 3. Respondent No. 2 though served, absent.

3. Mr. V.D.Sapkal, learned counsel for the applicant – original respondent No. 3 submits that delay caused in filing Appeal was not deliberate but due to lack of legal knowledge and proper advice. He submits that in view of the decision rendered by the Apex Court in the case of *Naveen Kumar V/s Vijay Kumar and Ors. Reported in (2018) 3 SCC 1* the legal position has been set to rest that so long the name of person is reflected in the records of registering authority as the owner of vehicle, such person is liable to compensate. He, therefore, submit that as the name of respondent No. 2 reflect in record of registering authority, the liability to compensate confines to respondent No. 2. He submits that in case delay is not condoned, serious prejudice would cause to applicant.

4. On the other hand, learned counsel representing the original respondent Nos. 1 and 2 have opposed the application

with contention that no sufficient cause has been shown on the part of the applicant to condone the delay of 1501 days in filing Appeal. It is submitted that the reasons assigned to condone the delay are false and concocted. It is pointed out though the applicant was served notice of claim petition way back in the year 2005, the applicant failed to appear before the Tribunal. Hence, case proceeded ex-parte against him. It is further pointed out that the Judgment and Award dated 22/10/2013 passed by the Tribunal in M.A.C.P. No. 227/2005 came to be challenged by original respondent No. 2 - Nanasaheb Dinkar Bhosale by filing Appeal before this Court, which came to be heard and decided by this Court vide Judgment and Award dated 22/08/2016. In said proceeding, the applicant was impleaded as respondent and duly served with notice of appeal. He engaged the services of Mr. B.R.Jaybhaye, Advocate to represent him in appeal. In this background, learned counsel for respondent Nos. 1 and 3 submits that the reasons assigned by applicant for condoning the delay are false and concocted.

5. On due consideration of the submissions advanced in the light of cause assigned for condoning the delay, I am of the view that no sufficient cause has been shown to condone the delay. The reasons assigned for condoning the delay appears to be false and concocted. It is pertinent to note that the claim petition seeking compensation was filed way-back in the year 2005. In spite of service, the applicant failed to appear before Tribunal for more than 8 years. The case proceeded ex-parte against the applicant. The Judgment and Award came to be passed on 22/10/2013 i.e. after eight years of filing of claim petition by the claimants. The applicant has not bothered to appear and contest the claim petition. In First Appeal No. 484 of 2015 preferred by the original respondent No. 2 against the Judgment and Award passed by

Tribunal, the notice of Appeal was duly served to applicant. In said Appeal, the applicant was impleaded as respondent No. 3 and duly represented through Advocate Mr. B.R.Jayabhaye. The Appeal was heard and finally decided vide Order dated 22/08/2016. Therefore, it can safely inferred that the applicant had full knowledge of the Judgment and Award passed by the Tribunal. The present Appeal along with application seeking condonation of 1501 days delay has been filed only after notice of execution proceeding filed by claimant issued to the applicant. Thus, the reasons assigned by the applicant to condone the delay can not be treated as sufficient to condone the delay 1501 days.

6. It is well settled position in law that the delay can not be condoned merely on asking by the party. In order to condone the delay, the party seeking condonation of delay must explain the delay by assigning sufficient cause. In the case of ***Maniben Devraj Shah V/s Municipal Corporation of Brihan Mumbai reported in (2012) 5 Supreme Court Cases 157***, the Apex Court has observed that if the explanation given by the applicant is found to be concocted or is fully negligent in prosecuting its case, then it would be legitimate not to condone the delay in exercise of judicial discretion vested with the Court.

7. In the case of ***Pundlik Jalam Patil (D) by L.Rs. V/s Exe.Eng. Jalgaon Medium Project and Anr. reported in 2008 (6) ALL MR 954 (S.C.)***, the Apex Court has considered the rationale behind laws of limitation. It is observed that the laws of limitation are founded on public policy. The unlimited and perpetual threat of limitation creates insecurity and uncertainty, and some kind of limitation is essential for public policy. The principle is based on the maxim "*interest reipublicae ut sit finis litum*" i.e. the interest of the State requires that there should be

end to litigation. It is observed that the object for fixing time limit for litigation is based on public policy of fixing a life span for a legal remedy for the purpose of general welfare and to ensure that the parties do not resort to dilatory tactics but avail their legal remedies promptly.

8. In my view, the case in hand is a case of gross negligence on the part of the applicant to prosecute his case. The applicant chosen to allow the proceeding to proceed ex-parte against him. After the Tribunal proceeded ex-parte and passed Award for a period of more than four years no steps were taken to challenge the Judgment and Award passed by Tribunal. The claim petition was presented in the year 2005. The summons/notice served upon applicant in the year 2005. The period of more than 13 years has lapsed from filing of claim petition and five years from passing of Award. The claimant is still waiting to receive the fruits of litigation from last 13 years. Thus, no case is made out to exercise the judicial discretion in favour of the applicant to condone the delay.

9. In the result, the application deserves to be rejected. Accordingly, the application is rejected with no order as to costs.

[V.L.ACHLIYA]
JUDGE