

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

**996 CIVIL APPLICATION NO.9039 OF 2018
IN FAST/18487/2018**

CHHAYABAI MACCHINDRA DHIWAR AND ORS ..Applicants
VERSUS
ABHIJIT PANDHARINATH SAWANT AND ANR ..Respondents

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Advocate for Applicants : Shri A.C. Darandale;
Advocate for Respondent No.2 : Shri S.R. Bodade.

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CORAM : PR. BORA, J.
Dated: August 24, 2018

PER COURT :

1. Heard Shri Darandale, the learned Counsel appearing for the applicants. Learned Counsel, Shri Bodade appears on instructions for respondent no.2 – Insurance Company and undertakes to submit his *Vakalatnama* within one week.

2. The reasons for occurrence of delay are explained by applicants in para nos.2 and 3 of the application. Though the learned Counsel for respondent no.2 has submitted that, the reasons as are stated in the said paragraphs are insufficient to condone the delay, the reasons as are assigned cannot be outrightly rejected or kept out of consideration. The delay does

not appear to have been caused for malafide reasons. In the circumstances, the opportunity needs to be given to the applicants-appellants to agitate their appeal on merits. However, I find substance in the alternate submission made by the learned Counsel for respondent no.2 that, in the event of their success in appeal, the applicants-appellants shall not be held entitled for the interest of the period of delay. In view of the submissions so made, the following order is passed.

ORDER

(i) The application is allowed. The delay caused of 418 days in filing the appeal is condoned. It is clarified that, if the applicants - appellants succeed in the present appeal and the amount of compensation is enhanced, the appellants would not be entitled for the interest for the period of delay on enhanced amount of compensation. Civil Application stands disposed of.

(ii) Copy of the present order be kept along with the papers of appeal.

(iii) Appeal be registered in accordance with law. On registration of the appeal, issue notice to the respondents.

Advocate Shri Bodade waives service of notice for respondent no.2 – Insurance Company. The applicant to serve respondent no.1.

(iv) Stand over after six weeks.

(P.R. BORA, J.)