

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

901 CIVIL APPLICATION NO. 8824 OF 2016
IN
FAST/16037/1994

SATISH RAMKRUSHNA WANI
VERSUS
DAMU NATHU PATIL AND ORS

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Mr. A.M.Phule, Advocate for Applicant.

Mr. S.R.Bagal, Advocate for R – 5.

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CORAM : V.L.ACHLIYA, J.

DATE : 01/10/2019

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ORAL ORDER :

1. The applicant/appellant has moved this application seeking condonation of 234 days delay in filing appeal for the reasons set out in detail in the application.
2. Heard learned counsel for applicant/appellant and respondent No. 5. The application dismissed against respondent No. 1 for not taking steps to bring his L.Rs. on record. The name of respondent No. 2 was deleted as reported to be dead. Respondent Nos. 3 and 4 though served, failed to appear.
3. Mr. Phule, learned counsel for applicant submits that the delay caused in filing appeal can not be termed as deliberate and intentional. It is submitted that due to poor financial condition and disturbed state of mind, the

applicant could not file appeal within time. It is submitted that applicant had suffered disablement to the extent of 70%. Due to serious injuries caused, the applicant was required to take medical treatment. Due to this reason, the appeal could not be filed within time.

4. On the other hand, learned counsel for respondent No. 5 opposed the application with the contention that the cause assigned can not be termed as sufficient to condone delay and urged to reject the application.

5. On due consideration of submissions advanced, I am of the view no case is made out to condone the delay. The Judgment and Order which is challenged by way of appeal was passed on 28/09/1993. As against the claim of Rs. 1 Lakh, the Tribunal has awarded compensation of Rs. 50,000/- with interest @ 12% per annum from the date of application till realization of entire amount. The respondents have satisfied the claim and paid the compensation amount. It is observed by the Tribunal that Dr. Dabre who was examined by the applicant/claimant has categorically stated that the applicant was completely recovered. Considering the nature of injuries and the evidence of witness examined by the applicant that applicant was totally recovered, the reasons assigned appears to be not genuine. Except bare words that applicant could not file appeal within time due to poor financial condition, there is nothing placed on record to substantiate the contention. On the contrary, record reveals that compensation of Rs. 50,000/- was received by applicant. In that view, no sufficient cause is shown to

condone the delay.

6. Apart from this, the dismissal of application would not cause serious prejudice to the applicant as the claim petition has been allowed by the Tribunal and compensation of Rs. 50,000/- has been awarded as against the claim of Rs. 1 Lakh. In that view, no case of serious prejudice is made out to entertain the appeal.

7. In view of above, I am inclined to reject the application. Accordingly, the application is rejected. In view of rejection of application for condonation of delay, the appeal stands dismissed.

[V.L.ACHLIYA]
JUDGE

KNP.