

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

**980 CIVIL APPLICATION NO.5682 OF 2018
IN FAST/9744/2018**

**SAMBHAJI RAMBHAU KOLHE AND ANR
VERSUS
JYOTIRLING TOURS AND TRAVELS AND ANR**

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Advocate for Applicants : Mr. Choudhari Sushant B
Advocate for Respondent No.1 : Mr. S.M. Kulkarni
Advocate for Respondent No.2 : Mr. M.M. Ambhore.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06th SEPTEMBER, 2019.

ORDER :

. Present application has been filed by the original claimants for getting the delay of 1676 days condoned in filing first appeal. The applicants are the original claimants in W.C.A. No.30 of 2012 which was filed before the Commissioner for Employees Compensation and Civil Judge, Senior Division, Osmanabad who has decided the said petition on 24.06.2013 partly against respondent No.1 only. Present respondent No.2 has been exonerated from payment of compensation and the applicants intend to challenge the said part of the judgment. It has been submitted by the applicants that after getting the knowledge about the order passed by

the learned Commissioner, they had filed the execution proceedings. It is stated that even after pursuing the said proceedings, they have not got any amount from respondent No.1. They are illiterate persons and therefore, relied by the advise given by their Advocate who was assuring them about the execution of the award. It is stated that after waiting for a considerable period, the applicants have taken expert opinion and then come to know that the learned Commissioner has wrongly exonerated the insurance company and therefore, there is scope for the appeal. Hence, they have filed this application.

2. Respondent Nos.1 and 2 have strongly opposes the application. The affidavit-in-reply on behalf of respondent No.2 has been produced wherein, in paragraph No.4, all the details have been given especially the fact that the applicants had knowledge about the judgment and then they preferred to file execution proceedings instead of filing appeal and therefore, whatever reasons stated by the applicants cannot be said to be just and proper much less reasonable.

3. In order to cut short it can be said that all the learned Advocates representing respective parties have supported their respective contentions.

4. At the outset it can be said that there is no doubt that the present applicants are illiterate. Applicant No.1 is 64 years old person and his wife applicant No.2 is 56 years old. They both are agriculturist, coming from rural area. The perusal of the impugned judgment would show that it has been allowed as against present respondent No.1 only and in clear terms, the applicants have stated that as per the advise given by their Advocate they preferred execution petition. There is no concealment of any fact by the applicants when they say that they persuaded their proceedings for about 3 to 4 years and could not get any amount from respondent No.1. It will not be out of place to mention here that even respondent No.1 has filed his affidavit-in-reply opposing the application. In paragraph No.11, he has categorically stated that he is not contesting the fact that the applicants are facing financial crisis. He has not given any reason as to why he has not deposited the decretal amount in the execution petition. One more fact that is required to be considered is that respondent No.1 has not stated that he was aggrieved by the judgment and award thereby exonerating the insurance company. He has not stated that he has filed any appeal challenging the said judgment and award. Under such circumstance, when the illiterate applicants relied on the advise given by their Advocate and proceeded with the execution petition, but then

could not get anything and after getting another opinion about filing of appeal they intend to file it. This will have to be taken as a just and reasonable ground to condone the delay. At the cost of repetition it can be said that applicants have not denied or have not put the fact in distorted manner that they had knowledge about the judgment and order passed by the learned Commissioner and therefore, whatever objections have been raised on behalf of the insurance company do not hold water. For the aforesaid reasons, following order is passed :

ORDER

- I) Civil Application stands allowed. Delay stands condoned.
- II) Statement is made by the learned Advocate appearing for the applicants that the applicants intend to waive the interest for the period of delay in case of success to their appeal. In view of the said statement made by learned advocate for the applicants, applicants to file undertaking to that effect in writing within a period of two weeks.
- III) Registry to verify and register the first appeal and place it for further consideration on 24.09.2019.

(SMT. VIBHA KANKANWADI, J.)