

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1140 OF 2019
IN
FIRST APPEAL (ST) NO.6521 OF 2019

Shri. Aajinath Kondiba Kanade	.. Applicant
Versus	
Smt. Savitra Devidas Talekar	.. Respondent

Mr. A.S. Kalekar for applicant.

CORAM: K.K. TATED, J.

DATED : MARCH 26, 2019.

P.C. :

- 1 Heard learned Counsel for applicant.
2. By this Civil Application, applicant is seeking condonation of 3 years 1 month and 3 days delay in filing First Appeal challenging the judgment and award dated 27.10.2015 passed by Motor Accident Claim Tribunal, Solapur in Motor Accident Claim Petition No.172 of 2014.
3. It is to be noted that in the present proceedings in an accident which occurred on 07.11.2010 the respondent lost her husband. Hence, she filed the Claim Petition before the Motor Accident Claim Tribunal, Solapur under Sections 166 and 140 of the Motor Vehicles Act claiming a sum of Rs.45,00,000/- by way

of compensation.

4. The tribunal after considering the evidence on record held that the respondent/original claimant is entitled for a sum of Rs.4,31,190/- by way of compensation along with interest at the rate of 7% per annum. Though the judgment and award passed on 27.10.2015, the applicant failed and neglected to deposit the said amount and or to pay the same to the respondent. Hence, respondent filed Darkhast application for recovery of the said amount. In that Darkhast application, notice was served on the applicant on 28.07.2017. Thereafter, the applicant filed application for certified copy on 01.08.2017. Thereafter the applicant filed the present proceedings before this Court in the month of January 2019.

5. The learned Counsel for the applicant submits that for want of knowledge about impugned judgment and award passed by the tribunal, it remain on their part to file the First Appeal immediately. He submits that applicant learnt about the judgment and award passed by the tribunal on 28.07.2017 when he received the notice from the Executing Court. He submits that as soon as he received notice from Executing Court, the applicant/original plaintiff filed application for certified copy and

instructed his advocate to file present First Appeal before this Court.

6. The learned Counsel for the applicant submits that for want of knowledge, it remain on his part to file present First Appeal immediately. He submits that applicant have good chance of success in the present proceedings. He further submits that, applicant had some financial difficulties, therefore, it remain on his part to file the present First Appeal immediately.

7. The learned Counsel for the applicant submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing First Appeal and matter be heard on its own merits. He submits that if the delay is not condoned, irreparable loss will cause to them.

8. I heard both the sides at length. It is to be noted that in the present proceedings though the impugned judgment and award was passed by the tribunal on 27.10.2015, the applicant filed present proceedings before this Court in the month of January 2019. The learned Counsel for the applicant relied on paragraph Nos.8 and 9 of the Civil Application for condonation of more than 3 years, which reads thus :-

“8. The Applicant states that the Respondent had filed execution proceeding (M.V.

Darkhast No.12 of 2017) before the Learned Chair Person, Motor Accident Claims Tribunal, Solapur, to recover the said amount from the Applicant. The Applicant states that the said M.V. Darkhast no.12 of 2017 was later on transferred to the Learned District Judge-I Barshi. The Applicant states that he received a notice of the said execution proceeding on or about first week of July, 2017. The Applicant states and submits that thereafter on 28/07/2017 he attended the proceedings of Darkhast and for the first time he got knowledge of the Judgment, Order and Award dated 27/10/2015. The Applicant states immediately contacted an advocate who applied for certified copies on 1/8/2017. The same were ready on 11/8/2017 and delivered on 16/8/2017. The Applicant states that he is a poor person and had to take a lot of efforts to arrange for the necessary finance to approach this Hon'ble High Court to file the aforesaid First Appeal. Hereto Annexed and marked as Exh-'A' is the copy of Notice in MACP Darkhast No.12 of 2017.

9. The Applicant states that there is a delay of about 3 years, 01 months and 3 days in filing the aforesaid First Appeal. The Applicant states that the delay is caused in filing the aforesaid appeal because his advocate did not inform him about the day to day proceedings of the case M.A.C.P. no.172 of 2014. The Applicant states that as mentioned above, his advocate did not file his written statement and so also did not attend the final arguments in the said case. The Applicant states that he is poor and an illiterate farmer living in the remote village of Pathurdi, which is around 150 kms. Away from Solapur. The Applicant states that the notice of the said darkhast was served on him in the first week of July, 2017 and he first time got the knowledge of the impugned Judgment, Order and Award on 28/7/2017. The Applicant states that even though he got the knowledge about the impugned Judgment, Order and Award on 28/7/2017 and got the certified copies of the impugned Judgment,

Order and Award on 16/8/2017, he could not approach this Hon'ble High Court to file the present appeal expeditiously, due to his poor financial situation. The Applicant states that he had to take a lot of efforts to arrange for the finances to approach this Hon'ble High Court, hence, the delay is unintentional and not deliberate. The Applicant states that he has a good case on merits and sanguine hopes of success. The Applicant states that he was not asked for any instructions by his advocate and under such circumstances, his case was not properly put up before the Learned Chair Person, Motor Accident Claims Tribunal, Solapur in M.A.C.P. no.172 of 2014. The Applicant states that he should not suffer due to the professional misconduct of his advocate. The Applicant states that if the delay is not condoned, grave hardship and irreparable loss will be caused to the Applicant. In the aforesaid circumstances, no prejudice will be caused to the respondent. Therefore the balance of convenience is also in favour of the Applicant.”

9. It is to be noted that though the applicant learnt about the impugned judgment and award passed by the tribunal in the month of July, 2017. The present proceedings is filed before this Court in the month of January, 2019. There is no explanation of for these two years delay in the present Civil Application.

10. Considering these facts, I do not find any reason to entertain the present Civil Application. Hence, Civil Application stands rejected.

11. No order as to costs.

(K. K. TATED, J.)