

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.178/2019
IN
CROSS OBJECTION(STAMP)NO.20555/2018
IN
FIRST APPEAL NO.1782/2007

New India Assurance Co. Ltd. ... Appellant.
Vs.
Smt.Varsha C. Swami ... Respondent.

Mr.Teupal S. Ingle, advocate for applicant.
Mr.Yatin Malvankar i/b Adv. Amol Gatne for respondent no.7.
Mr.D.S. Joshi for appellant.

CORAM : K.K.TATED, J.
DATED : JUNE 12, 2019.

P.C.

Heard the learned counsel for parties.

2. By this civil application, the applicant/claimant is seeking condonation of 11 years and 1 day's delay, in filing the cross objection.

3. Learned counsel for applicant submit that, in the present proceeding, in an accident which occurred on 22.10.2000, applicants lost her husband. Therefore, they filed Motor Accident Claim Petition no. 164/2001, u/s 166 of Motor Vehicle Act for compensation of Rs.15,00,000/-. After considering the evidence on record, the Tribunal by Judgment and Award dated 20.1.2007, awarded an amount of Rs.14,83,390/- by way of compensation with interest @ 7.5% p.a. He submits that against the said award, appellant/company filed present first

appeal. He submits that appellant deposited sum of Rs.20,04,504/- in Tribunal on 14.8.2007. He submits that for want of solvent security, it remained on the part of applicant to withdraw the said amount. He submits that subsequently applicant filed fresh application for withdrawal of amount, in which, this court by order dated 27.6.2014 permitted the applicant to withdraw sum of Rs.5 lakhs without furnishing any security. He submits that, thereafter they learnt that claimants can file application for additional compensation. Hence, they filed present cross objection stamp no.20555/2018. He submits that because of financial difficulty, there is delay on the part of the applicant to file cross objection. Same was filed on 18th July 2018.

4. In support of his contention for delay, he relies on para 2 of the civil application. He submits that in the interest of justice, this court, be pleased to condone the delay and allow the applicant to file cross objection for additional compensation. He submits that, it is not necessary for applicant to show sufficient cause for conditional delay in filing cross objection. In support of his contention, he relies on the judgment, in the case of **State of Maharashtra Vs. Kalu Ladku Mhatre, 2011(4) Mh.L.J., 741**. On the basis of this submissions, learned counsel for applicant submits that, in the interest of justice this court be pleased to condone the delay in filing cross objection and same be heard on merits. He submits that if delay is not condoned, irreparable loss would be caused to the applicant.

5. On the other hand, learned advocate for the

Company/original appellant vehemently opposed the present application. Applicant has not shown subsequent cause for condonation of more than 11 years delay in filing Cross objection. Though, sum of Rs.5 lakhs was withdrawn by applicant, as per order dated 27.6.2014, they have failed and neglected to file cross objection immediately. Cross objection was filed by applicant on 18th July 2018 i.e. after more than 5 years. There is no explanation for the period from 2014-2018. Hence, there is no substance in the civil application and same is required to be dismissed.

6. I heard both the sides. It is to be noted that, in the present proceeding applicant/claimant received sum of Rs.5 lakhs, as per order dated 27.6.2014, passed by this court. Thereafter, the applicant filed present cross objection in the month of July 2018 and preferred present application for condition rule.

7. Plain reading of para 2 of application shows that, applicant has filed cross objection in casual manner. There is no explanation for delay from the date of withdrawal of amount of Rs.5 lakhs in 2014 till filing of cross objection in 2018. Therefore, it is difficult to accept the statement of learned counsel for applicant. Even in the matter of Kalu Mhatre (supra) Court specifically stated that at least there should be same reason for delay. In case in hand, applicant has not shown any reason for condonation of delay, even from 2014 to 2018. Hence, authority stated by applicant in the matter of Kalu Mhatre, is not applicable.

8. Considering the submissions made by learned counsel for

applicant and as applicant failed to show any cause from the date of withdrawal of amount till date of filing of application, I do not find any reason to entertain present civil application .

9. Hence, the following order.

- a) Civil application is rejected.
- b) No order as to costs.

(K.K.TATED, J.)