

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.844/2018

with

First Appeal (ST) No.21977/2017

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. S. S. Salunkhe for the Applicant
Mr. Prakash Mishra I/b. Sandeep Mishra
for Respondent No.1.
Mrs. Jyoti Bajpayee for Respondent
No.2.

CORAM : K.K.TATED, J.

DATED : JULY 19, 2019

P.C.

1 Heard. This Application is for condonation of 2 years and 212 days delay in preferring the appeal challenging the judgment and award dated 23.09.2014 passed by the MACT Solapur in MACP No.217/2000.

2 It is to be noted that in the present proceedings, the Tribunal has held that the claimants are entitled to sum of Rs.10,66,746/- by way of compensation with 9% p.a. interest from the date of petition i.e. 24.08.2009.

3 The learned counsel for the Applicant submits that the original claimant is mentally retarded and it remained on

their part to file the present appeal within time. He submits that even the Applicant claimant's mother is also senior citizen. He submits that in the Trial Court also the claim petition was filed through the claimant's mother and the present Application is also filed through mother who is senior citizen. He submits that because of old age it remained on the part of the Applicant's mother to take appropriate steps to file the appeal in this court. He submits that even there was financial difficulty for payment of court fees. The learned counsel for the Applicant relies on paragraph 6 of the Civil Application, which reads thus:

"6. The Applicant submits that there is a delay in filing the present appeal. Applicant is mentally unfit and he is not having any knowledge about the legal proceedings, the Applicant was not aware that, he can file Appeal for enhancement of the compensation, even the Advocate at Solapur also given wrong advice that, he cannot file Appeal in the Hon'ble High Court. In the month of March 2017 he enquired with the Advocate of Bombay at that time he came to know that, he can file Appeal in the High Court. The impugned Judgment and order is passed on 23.09.2014. Thereafter the Applicant applied for certified copy of the said Judgment and Order on

22.03.2017. The same is received by the Applicant on 03.04.2017. Thereafter, the Applicant approached the Advocate at Mumbai to prefer the Appeal and immediately the advocate for Applicant preferred the present Appeal. Hence, there is delay of 2 year 61 days in filing the present Appeal.”

The Applicants state that, the Applicant is mentally unfit person and his mother is also senior citizen and her health is also not proper, several occasion she was admitted in the Hospital. The Applicant financial condition was also very bad and he could not arrange the money to prefer the Appeal within time, therefore he had taken some time to arrange the funds to prefer the Appeal in this Hon'ble Court. The Applicant was not aware about the legal proceedings and wrong advice was given to them that, they cannot preferred the Appeal against the said judgment and order by the Advocate at Solapur. Therefore, there is delay in filing the present Appeal. The delay in filing the said Appeal is not intentional and deliberate. Therefore in the interest of justice and equity this Hon'ble Court be pleased to condone the delay in filing said Appeal”.

4 On the basis of this submission, 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 the First Appeal. He submits that, they have good chance of success in the matter. He submits that if delay is not condoned irreparable loss will be caused to them.

5 On the other hand the learned counsel for the Respondent submits that there is no question of condoning the inordinate delay of more than three years in filing the First Appeal. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

6 It is to be noted that in the present proceedings the impugned judgment and award was passed on 23.9.2014 and thereafter the Applicant filed the Application for certified copy on 22.03.2017 and same was ready for delivery on 31.03.2017 and that was collected by the Applicant on 03.04.2017 and filed the present appeal in July 2017. There is no explanation in the Civil Application as to why the Applicant took more than two and half years to apply for certified copy of the impugned judgment and award. At the same time the reason

given by the Applicant that the Applicant's mother is senior citizen and therefore it remained on their part to file the First Appeal in time, cannot be a ground for condonation of inordinate delay of two years in filing the First Appeal.

7 Apart from that there is no question of financial crisis because it is specifically stated in the judgment and award dated that the Trial Court has permitted the Applicant to withdraw sum of Rs.5,86,713/-.

8 Considering these facts and as there is no sufficient explanation for condonation of inordinate delay, I do not find any reason to entertain the present Civil Application. Hence, following order is passed:

- a. The Civil Application stands rejected.
- b. No order as to costs.
- c. In view thereof, registration of the First Appeal stands rejected.
- d. Refund of Court Fees as per Rules.

(K.K.TATED, J.)