

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.2121 OF 2019

WITH

CIVIL APPLICATION NO.2122 OF 2019

WITH

FIRST APPEAL (ST.) NO.3723 OF 2019

Bajaj Allianz General Insurance Co. Ltd. .. Applicant

vs.

Mr.Aniruddha Prabhakar Bhargav and Anr. .. Respondents

Ms.Aditi Athawale i/b Ms.Yogita D. Chitnis for the Applicant

CORAM : K. K. TATED, J
DATE : AUGUST 29, 2019

P.C.:

. Heard.

2 By this Civil Application, Applicant Insurance Company is seeking condonation of 2 years 174 days delay in filing First Appeal challenging the judgment and award dated 30.3.2016 passed by MACT, Mumbai in Application No.2858 of 2008 holding that the Respondent original Claimants are entitled compensation of Rs.2,24,180/- with interest @ 9% p.a.

3 The learned counsel for the Applicant submits that they applied for certified copy of judgment and award dated 21.04.2017 and same was ready and delivered on 06.06.2017. As soon as certified copy was received by them, they immediately forwarded proposal to the higher authority for deciding whether appeal be preferred or not. She submits that before filing appeal on behalf of the Insurance Company, they have to take decision at several levels. Due to this pressure, there was delay in filing First Appeal. She submits that they have good chance of success in the present matter. She submits that Tribunal erred in coming to the conclusion that Insurance Company is liable to pay compensation. Hence, 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. She submits that if delay is not condoned, irreparable loss will be caused to them.

4 It is to be noted that in the present proceeding, in an accident which occurred on 05.08.2008, Respondent original Claimant sustained injuries. At that time, he was working with J.B. Chemicals, Worli and was earning Rs.20,000/- per month. Hence Respondent Claimant filed Application under section 166 of the Motor Vehicles Act claiming compensation and that was allowed by the Tribunal on its own merits.

5 The learned counsel for the Applicant submits that, applicant has given reason for inordinate delay of 2 years 174 days that before filing First Appeal, they have to take decision at several levels. In support of this contention, she relied on

paragraph 6 of the Civil Application which reads thus:

“6. The Applicant states that the said delay is neither intentional nor deliberate. The delay has been caused as some time had been consumed in tracing the file as the concerned Advocate has changed the office and in the shifting some briefs including the present matter was misplaced. The Applicant Company most sincerely wants to challenge the impugned Judgment and Award by filing and prosecuting the present First Appeal. Thereafter, the further delay was caused mainly because of the corporate procedure, which requires obtaining legal opinion and sending it for approval from the decision making authorities. The further time has already been consumed in getting the Court fees and statutory cheque deposit. The Applicant states that the Applicant has a good case of defense in the matter, the Applicant has decided to file and prosecute the present appeal. The Applicant states that the delay has mainly cause because of intervening Christmas Vacation.”

6 Bare reading of paragraph 6 of the Civil Application shows that Applicant consumed maximum time from taking legal opinion and sending the proposal from one authority to other authority for filing present First Appeal.

7 Movement of the file from one Department to other Department, cannot be a good ground for condonation of inordinate delay. It is to be noted that this court in the matter of **Special Land Acquisition Officer & Anr. Vs. Jose Prazeres de Piedade Pinto 2006(2) BCR 773** held that the delay caused because of movement of file from one table to another cannot be considered as a good ground for delay. Para 12 of the said judgment reads thus:

“12. The delay merely because it has occasioned in a matter relating to land acquisition case involving public money, condonation thereof cannot be construed as a matter of right to the Government. In case of delay, it is necessary for the Government machinery to furnish the necessary satisfactory explanation for such delay. In case the delay has occurred on account of either wilful acts on the part of the concerned officer/ s or for any other reason, which could even defeat the rights of the Government or the acquiring body in relation to the provision for appeal against the award passed by the Reference Court, the mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal. In the case in hand, as already observed above, merely stating that the file moved from one office to another, either for opinion or for preparation of

financial report, no explanation has been placed on record as to why it took particular number of days for obtaining either the opinion of the Law Department or for preparing the financial implication report by the Executive Engineer. It apparently discloses total failure on the part of the applicants in explaining the cause for the delay of 281 days in filing the appeal as well as 51 days' delay in filing the application for condonation of delay.”

8 The apex court in the matter of **Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. 2012 ALL SCR 892** held that the delay attributable to impersonal machinery and bureaucratic methodology cannot be a ground for condonation of delay. Para 13 of the said judgment reads thus:

“13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be

used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

9 In view of the above mentioned facts as Applicant failed to disclose sufficient cause for condonation of inordinate delay, I do not find any substance in the present Civil Application. Hence, following order is passed :

- a. Civil Application for condonation of delay stands rejected.
- b. In view of rejection of Civil Application for condonation of delay, nothing survives in First Appeal (St.) No.3723 of 2019. Hence, registration of First Appeal stands rejected.
- c. In view thereof, nothing survives in Civil Application No.2122 of 2019 which is for stay of the impugned judgment and award passed by the

Tribunal.

- d. Hence, same stands rejected.
- e. No order as to costs.

(K.K.TATED, J.)