

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.1522/2019

in

First Appeal (ST) No.9862/2019

with

Civil Application No.1523/2019

Rashidkhan Tajkhan Maniyar

Applicant

Vs.

Bhaskar Pandurang Walte & Ors.

Respondents

Mr. Sandeep R. Khurkute I/b. TRP for the Applicant

CORAM : K.K.TATED.J.

DATED : JUNE 18, 2019

P.C.

1 Heard. By this Civil Application, the Applicant is seeking 6 years and 9 months delay in filing the First Appeal challenging the judgment and award dated 27.02.2013 passed by the MACT, Nasik in MACP No.1303/2010 holding that the Respondent-Claimant is entitled to Rs.1,91,908/- by way of compensation with interest @ 7.5% p.a.

2 The learned counsel for the Applicant submits that they had appointed the Advocate to protect their interest before the MACT. He submits that the said Advocate has failed and neglected to take any steps in that matter. Even he remained absent for final hearing. Not only that the said Advocate never informed about the judgment passed by the MACT. He submits that they learnt about the impugned judgment and award in

favour of the original claimant when they received notice from Talegaon Court. He submits that thereafter the Applicant made enquiry and learnt about the impugned judgment and award. Thereafter the Applicant filed an application for certified copy on 12.12.2018 which was ready for delivery on 20.12.2018. Thereafter the Applicant filed the present First Appeal before this court on 19.03.2019. He submits that they have good chance of success in the matter. He submits that the Tribunal has awarded compensation on higher side. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal and matter be heard on merits. He submits that if the Civil Application is not allowed irreparable loss will be caused to them.

3 It is to be noted that in the present proceedings in an accident which occurred on 18.09.2011 the Respondent-Claimant sustained permanent disability. Hence, the Respondent-Claimant made an application u/s.166 of the Motor Vehicles Act claiming compensation of Rs.6 lacs with interest @ 18% p.a. The Tribunal, after considering the evidence on record held that the Respondent-Claimant is entitled to sum of Rs.1,91,908/- by way of compensation with interest. It is to be noted that in the present proceedings the Applicant has not placed on record any copy of notice and/or letter written by him to the advocate who filed vakalatnama on behalf of him before the MACT calling upon his explanation. Therefore, it is very difficult to accept the reasons given by the Applicant in the present Civil Application. In any case, there is inordinate delay of more than 5 years in filing the First Appeal.

4 This Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice just because the applicant happens to be a Corporation.

The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation.

The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

The Apex Court in the matter of **Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara & Anr, 2009(3) SCC pg 525** held that while dismissing an Appeal on the ground of limitation, going into the merits of the case is not allowed.

The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

The Apex Court in the matter of Esha Bhattacharjee Vs. Managing Committee of **Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay needs to be rejected.

5 Considering the above mentioned facts and the law declared by the apex court as well as this court, I am of the opinion that the Applicant has failed to make out any case for condonation of delay.

6 Hence, following order is passed:

a The Civil Application for condonation of delay stands dismissed.

b In view thereof, registration of the First Appeal is rejected.

c Consequently, the Civil Application No.1523/2019 for stay stands dismissed as infructuous.

(K.K.TATED, J.)