

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

**CIVIL APPLICATION NO.1479 OF 2019
WITH
CIVIL APPLICATION NO.1480 OF 2019
WITH
FIRST APPEAL (ST.) NO.11832 OF 2019**

United India Insurance Company Limited .. Applicant

vs.

Uday Chandrakant Patil and Ors. ..
Respondents

Mr.Nikhil Mehta i/b M/s.KMC Legal Venture for the applicant

**CORAM : K. K. TATED, J
DATE : APRIL 23, 2019**

P.C.:

. Not on board. At the request of Advocate for the Applicant,
matter is taken on board for urgent orders.

2 Heard.

3 By this Civil Application, Applicant Insurance Company is
seeking condonation of 1 year and 236 days delay in filing First
Appeal challenging the judgment and award dated 13.04.2017

passed by MACT, Raigad at Alibag in MACP No.333 of 2009.

4 The learned counsel for the Applicant submits that there is a delay on the part of Applicant to file the present First Appeal. He submits that they have good chance of success in the present proceeding. He further submits that though Trial Court held that Insurance Company is liable to pay 25% of total compensation, executing court issued attachment warrant against them for remaining amount also. In support of that he relies on Darkhast Application No.69 of 2017.

5 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. In support of his submissions, he relies on paragraph 4 of the Civil Application which reads thus:

"4. The Judgment and award were passed on 13.04.2017. The Advocate for the Appellant in the Trial Court made an application for the certified copy of the judgment on 19.04.2017. The Certified Copy of the Judgment & Award was made ready for the delivery by the department of the Trial Court on 30.05.2017 and the same was collected by the Trial Court Advocate on 07.06.2017. The Appellant as per the Award deposited its share of liability being 25% of the share under the Award on 07.09.2017 being a sum of Rs.2,20,323/-. However, on 28.03.2019 the Trial Court issued a warrant of attachment for the further 75% sum which is not payable by the Appellant. The Appellant thereafter

is immediately filing the present First Appeal after receiving necessary approvals to do so on 05.04.2019 since it is clearly liable for the 75% of the amount since the Tribunal ought not to have passed item no.4 in the operative part of the order. Hereto annexed and marked as Exhibit - A is the copy of the receipt. Hence, the Appeal has been delayed by 1 year 236 days."

6 The learned counsel for the Applicant submits that if delay is not condoned, irreparable loss will be caused to the Applicant.

7 It is to be noted that in the present proceeding, Trial Court passed judgment and award on 13.04.2017. Thereafter, the Applicant filed application for certified copy on 29.04.2017. Same was ready for delivery on 30.05.2017. Same was collected by the Applicant on 07.06.2017. They filed the present First Appeal in this court in the month of March 2019. There is no explanation for inordinate delay of more than 1 ½ years in filing First Appeal.

8 The Apex Court in the following authorities held that for condonation of delay, Applicant must show sufficient cause. Not only that, if there is unreasonable delay, then there is no question of condoning the same. The Apex Court held that the Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The Apex Court also held that if incorrect facts are stated in the application, then also there is no question of allowing the

application for condonation of delay. Those authorities are as under:

(1) *Balwant Singh (Dead) Vs. Jagdish Singh & Ors.* (2010) 8 SCC 685.

(2) *B. Madhuri Goud Vs. B. Damodar Reddy* (2012) 12 SCC 693.

(3) *Madhya Pradesh Matsya Mahasangh Vs. Sudheer Kumar & Anr.* (2010) 15 SCC 179.

(4) *Pundlik Jalam Patil (Dead) By LRs. Vs. Executive Engineer, Jalgaon Medium Project & Anr.* (2008) 17 SCC 448.

9 Considering these facts, I do not find any substance in the present Civil Application. Hence, following order :

a. Civil Application stands rejected.

b. In view thereof, First Appeal and Civil Application for stay does not survive. Same stand dismissed as infructuous.

c. Liberty granted to the Applicant to file appropriate application before the executing Court for raising attachment order on the ground that they are liable to pay only 25% of entire compensation.

d. Parties to act on authenticated copy of this order.

(K.K.TATED, J.)