

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

**CIVIL APPLICATION NO. 2469 OF 2019
IN
FIRST APPEAL (ST.) NO. 12347 OF 2019**

G. Ramamurthy

..... Applicant.

Vs.

Chhabu Suresh Kamble & Ors.

..... Respondents.

S. Sharada for the Applicant.

T. J. Mendon for Respondent Nos. 1 to 3.

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**CORAM : K.K.TATED, J.
DATED : SEPTEMBER 17, 2019**

PC.

1 Heard Learned Counsel for the parties.

2. Though Respondent No. 4 Insurance Company is duly served, no one appeared on behalf them when the matter is called out.

3. By this Civil Application, the Applicant is seeking condonation of 212 days delay in filing the First Appeal challenging the Judgment and award dated 19th July, 2018 passed by the Commissioner for Employees Compensation and Judge, 3rd Labour Court, Mumbai in application (E.C.A.) No. 238/B-51/2017 holding that the Respondents/Original Claimants are entitled compensation of Rs. 7,88,240/- with interest @ 12% p.a. and 50% penalty from Original Opponent No.1. The operative part of the Judgment reads thus:

“

- 1) *The application is allowed.*
- 2) *The applicants are entitled to get compensation of Rs. 7,88,240/- (Rupees Seven Lacs Eighty Eight Thousand Two Hundred Forty Only) and ambulance charges and funeral expenses of Rs. 25,000/- (rupees Twenty Five Thousand Only) alongwith interest at the rate of 12% p.a. from the date of accident till its realization.*
- 3) *The opp. Party no. 1 and 2 are jointly and severally liable to pay compensation amount of Rs. 7,88,240/- (Rupees seven Lacs Eighty Eight Thousand Two Hundred Forty Only) and ambulance charges and funeral expenses of Rs. 25, 000/- (rupees Twenty Five Thousand Only) along with interest at the rate of 12% p.a. from the date of accident till its realization to the applicants.*
- 4) *The opp. Party no. 1 further directed to pay 50% penalty amount on compensation of Rs. 7,88,240/- i.e. Rs. 3,94,120/- (Rupees Three Lacs Ninety Four Thousand One Hundred Twenty Only) to the applicants.*
- 5) *After depositing the amount of compensation of Rs. 7,88,240/- (Rupees Seven Lacs Eighty Eight Thousand Two Hundred Forty Only) and Rs. 25,000/- (rupees Twenty Five Thousand Only) towards Ambulance Charges and funeral expenses alongwith interest at the rate of 12% p.a. from the date of accident till its realization and also 50% penalty amount on compensation i.e. Rs. 3,94,120/- (rupees Three Lacs Ninety Four Thousand One Hundred Twenty Only) by the opp. Party No. 1 and 2 be paid to the applicants, as per the provisions section 8 of Employees compensation Act, 1923, through NEFT in their Bank Accounts, after identification and verification of the relevant documents.*
- 6) *Proceeding be accordingly closed”.*

4. The Learned Counsel appearing on behalf of Respondent No. 1 to 3 raised preliminary objection about the maintenance of the First Appeal as well as Civil Application itself. He submits that as per Section 30 of the Employees Compensation Act, 1973, Appeal is not maintainable on the part of the employee unless and until entire amount is deposited with interest before the labour Court and to place on

record receipt to that effect. He submits that in the present, proceedings, the Applicant deposited only sum of Rs. 3,94,120/- whereas the awarded amount comes more than 10,00,000/-. Therefore, the Application itself is not maintainable and the same is required to be dismissed with costs.

5. On the other hand, the Learned Counsel for the Applicant submits that in the present proceedings, the Labour Court passed the impugned Judgment and award dated 19th July, 2018 directing the Applicant as well as Respondent No.4 insurance company to pay sum of RS. 7,88,240 with 12% interest jointly and severally. She submits that the insurance company filed the First Appeal Stamp No. 6364/2019. She submits that the insurance company preferred the Civil Application No. 930 of 2019 for stay of the Judgment and award. She submits that this Court (Coram: Anuja Prabhudeshai, J.) by order dated 8th March, 2019, recorded the statement of advocate for insurance company that they have deposited the total compensation of Rs. 9,65,413 inclusive of the interest in compliance with the impugned Judgment and award. She submits that, thereafter, the Applicant by their cheque dated 6/04/2019 bearing No. 110846 drawn on the Chembur Nagari Sahakari Bank Ltd. deposited the sum of Rs. 3,94,120/- before the Labour Court. She submits that if both the amounts considered together i.e. amount deposited by the insurance company and amount deposited by the Applicant, there is compliance of Section 30 of the said act. Therefore, the objection raised by the advocate for Respondents/Original Claimants is not maintainable in law.

6. Bare reading of impugned Judgment and award dated 19th July, 2019, clause 3 of the operative part, shows that the Labour Court directed the Applicant as well as insurance company to pay jointly and severally sum of Rs. 7,88,240/- with interest. The Insurance Company has deposited the sum of Rs. 9,65,413 and remaining amount of Rs. 3,94,120 deposited by the Applicant. This shows that the compliance of Section 30 of the said act. Therefore, the objection raised by the Learned Counsel for Respondents/Original Claimants is not maintainable and the same is rejected.

7. By this Civil Application, the Applicant is seeking condonation of 212 days delay in filing the First Appeal. It is the contention of the Applicant that, when the summons were served on his family member, that time the Applicant's wife was not keeping well and she was undergoing the treatment in various hospitals. The person who received the summons failed and neglected to inform the Applicant about the same. Not only that, even the advocate for Applicant before the Labour Court failed and neglected to inform the Applicant about the order passed by the Labour Court, hence, there is a delay in filing the First.

8. The Learned Counsel for Applicant submits that, because of the mistake on the part of the advocate the litigant should not suffer. She further submits that they have good chance of success in the present proceedings. Hence, in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal and matter to be heard on its own merits. She submits that if delay is not condoned, irreparable loss will cause to the Applicant.

9. On the other hand, the Learned Counsel for Respondent No. 1 to 3 vehemently opposed the present Civil Application. He submits that the Applicant failed to show the sufficient cause for condonation of delay of more than 200 days. He submits that bare reading of Para. 4, 5 and 6 of the Civil Application shows that, the Applicant failed to disclose the sufficient cause for condonation of delay. Hence, there is no substance in the present Civil Application and the same is required to be dismissed with costs.

10. I heard both sides at length. It is to be noted that, in the present proceedings the Applicant appointed the advocate before the Labour Court to protect his interest. It remained on the part of the said advocate to intimate the decision of the Labour Court to the Applicant immediately. Because of the mistake on the part of the advocate, litigant should not suffer. In any case, the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123* held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare.

11. Considering the facts and circumstances of the present case and in view of the law laid down by the Apex Court in the matter of N.Balakrishnan (Supra), I am of the opinion that the Applicants have made out a case allowing the Civil Application. Hence, the following order is passed:

- a. Delay in filing the First Appeal is condoned.
- b. Civil Application stands disposed of accordingly.
- c. No order as to costs.

(K.K.TATED, J.)