

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3554/2017
with
First Appeal (ST) No.13743/2017

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. D. R. Mahadik for the Applicant

CORAM: K.K.TATED, J.
DATED : AUGUST 21, 2019

P.C.

1 Heard. This Application is for condonation of 105 days delay in preferring the appeal challenging the judgment and award dated 07.10.2016 passed by the MACT Mumbai below Exhibit- 2 in application No.1633/2015.

2 The learned counsel for the Applicant submits that they have to take approval from several departments for filing the First Appeal. Hence, there is delay. In support of his contention, the learned counsel for the Applicant relies on para 2 of the Civil Application. He 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 if delay is not condoned, irreparable loss will be caused to them.

3 In the present proceedings the Respondent-Claimant had filed application u/s.140 of the Motor Vehicles Act, 1988 for the sum of Rs.25,000/- towards No Fault Liability which was allowed by the Trial Court on 07.10.2016.

4 The Applicant filed an application for certified copy of the impugned order on 02.12.2016 and it was delivered on 19.12.2016. The present civil application for condonation of delay is filed by the Applicant on 05.05.2017.

5 Bare reading of the Civil Application shows that the Applicant has failed to disclose the sufficient cause for delay in filing the application for certified copy. Not only that, when the certified copy of the order was ready and delivered to the Applicant on 19.12.2016, the First Appeal is filed in this court on 05.05.2017. There is no explanation in the Civil Application as to why the Applicant took near about 5 months for filing the First Appeal after receipt of the

certified copy of the impugned order. In paragraph 2 of the Civil Application, the Applicant has stated that the concerned authority took some time for giving sanction for filing the First Appeal, that cannot be a ground for condonation of delay.

6 In any case, in the present proceedings the Tribunal has passed the order u/s.140 of the Motor Vehicles Act, 1988.

7 It is to be noted that in the case of **Raphik Mehbub Pakhali Vs. Anantkumar Pravinkumar Jajal and Ors. 2016 (4) Bom.C.R. 759** this court held as under:

“12. In a series of judgment, it has been consistently held that the scope of enquiry in an application under Section 140 is extremely limited. One has to only ascertain as to whether (i) the accident has arisen out of the use of the motor vehicle, (ii) the said accident has resulted in a permanent disablement of the person who is making the claim or the death of a person whose legal representatives are making the claim, and (iii) the claim is made against the owner and insurer of the motor vehicle involved in the accident. Once these three factors are established,

prima facie, in my view, the claimant is entitled to succeed in an application under Section 140 of the Motor Vehicles Act. I may now briefly refer to some of the judgments in this behalf. “

8 In view of the aforesaid judgment of this court and also in view of the above mentioned facts, I do not find any reason to entertain the present Civil Application.

9 Hence, following order is passed:

- a. The Civil Application stands rejected.
- b. In view thereof, registration of the First Appeal stands rejected.
- c. Consequently, the Civil Application for stay of the impugned order stands dismissed as infructuous.

(K.K.TATED, J.)