

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3012/2013
in
First Appeal (ST) No.18429/2013

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr. Madhur Rai I/b. PRS Legal for the Applicant. Mrs. Sapana Krishnappa for Respondent Nos.1 to 4.

CORAM: K.K.TATED, J.
DATED : AUGUST 6, 2019

P.C.

1 Heard. By this Civil Application the Applicant - owner of the offending vehicle is seeking condonation of 2 years and 110 days delay in filing the First Appeal challenging the judgment and award dated 02.12.2010 passed by the learned MACT, Mumbai in MACP No.27/2004 holding that the Respondent-Claimants are entitled to sum of Rs.6,50,000/- by way of compensation inclusive NFL with interest @ 7.5% p.a.

2 The learned counsel for the Applicant submits that in the present

proceedings the Trial Court has passed the judgment and award dated on 02.12.2010 and the application for certified copy of the judgment was made on 04.03.2013. He submits that it remained on the part of the advocate appearing in the Trial Court to make application for certified copy immediately. He submits that immediately after receipt of certified copy from the Trial Court on 24.04.2013 they preferred this appeal on 20.05.2013. He submits that they have good chance of success in the matter. He submits that if delay is not condoned irreparable loss will be caused to them. He submits that this Hon'ble Court be pleased to condone the delay and the matter be heard on merits. The learned counsel for the Applicant relies on para 2 of the Civil Application, which reads thus:

“2. The Appellant states that the impugned judgment and order /award has been passed on 02.12.2010. The Advocate in the Trial Court filed application for certified copy on 04.03.2013. The copies were delivered to the Trial Court Advocate on 24.04.2013 and the present First Appeal has been presented in the office of the High Court on 20.06.2013. Therefore,

after deducting prescribed period of limitation and copying days, delay of 2 years and 110 days in filing the First Appeal. “

3 The learned counsel for the Applicant submits that the Respondent Insurance Co. has also preferred First Appeal No.970/2014 against the impugned judgment and award which is admitted by this court.

4 On the other hand, the learned counsel for the Respondent Insurance Co. has vehemently opposed the Civil Application. He submits that the Applicant has not shown sufficient cause for condonation of inordinate delay. Hence, there is not substance in the Civil Application and same is liable to be dismissed with costs.

5 The learned counsel for the Respondent No.1 claimant submits that in the accident which occurred on 18.11.2003 the Applicant lost her husband Alpesh. Though the award is passed in the year 2004 till today she has not received any compensation. Apart from that, there is delay on the part of the Appellant to prefer the

present First Appeal of more than two years. There is no explanation on the part of the Applicant as to why the Advocate before the Trial Court took more than two years to apply for certified copy of the impugned judgment and award. Hence, there is no substance in the Civil Application. Same is liable to be dismissed with costs.

6 The learned counsel for the Applicant submits that because of mistake on the part of the Advocate, the litigant should not suffer. It remained on the part of the advocate for the Applicant to make an application for certified copy, immediately.

7 It is to be noted that 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.

8 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Civil

Application and the law declared by the apex court, I am satisfied that the Applicant has made out a case for allowing the Civil Application, on payment of cost of Rs.10,000/- to the Respondent-Claimant.

9 Hence, following order is passed:

- a. Delay in filing the First Appeal is condoned.
- b. The Applicant to pay cost of Rs.10,000/- to the Respondent-Claimant or their Advocate and file a receipt thereof on record on or before 31.08.2019, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. The Civil Application stands disposed of accordingly.
- d. No order as to costs.

(K.K.TATED, J.)