

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

**CIVIL APPLICATION NO. 2333 OF 2015
WITH
CIVIL APPLICATION NO. 2334 OF 2015
IN
FIRST APPEAL (ST). NO. 18075 OF 2015**

Bajaj Allianz General Insurance Company Ltd.

...Applicant

Versus

Shri. Khandu Baburao Jadhav & Anr.

...Respondents

...

Mr. H.S. Shinde i/b Milind M. Sathaye , Advocate for Applicant.

Ms. S.S. Dwivedi i/b Jyoti Bajpayee, Advocate for the Respondent No.1.

...

CORAM : K.K.TATED, J.
DATED : SEPTEMBER 27, 2019

P.C.

1. Heard learned counsel for the parties.
2. By this Civil Application, Applicant-Insurance Company is seeking condonation of 394 days delay in filling First Appeal challenging the Judgment and Award dated 26th February 2014 passed by Commissioner for Workmen's Compensation & Judge, First Labour Court, Mumbai in Application (WCA) No. 909/C-323 of 2008 holding that the Respondents/Claimants are entitled sum of Rs. 2,21,675/- with interest at the rate of 12% p.a.
3. The Learned Counsel for the Applicant submits that, before filing the First Appeal, they have to take approval from Several Departments. Hence, there is

delay on their part for filing the First Appeal before this Court. In support of this contention, the learned Counsel for the Applicant relies on para 8 of Civil Application which reads thus:

“8. The Applicant states that the said delay is neither intentional nor deliberate. The Applicant Insurance-company most sincerely wants to challenge the impugned Judgment and Award by filing and prosecuting the present First Appeal. The delay is caused mainly because of the corporate procedure, which requires obtaining legal opinion and sending it for approval from the decision making authorities for both settlement and appeal filing. The Applicant states that the Applicant Insurance Company was trying to settle the said Claim filed by the Respondents/Original Claimants. Till middle of February-2015 it was trying for settlement but unfortunately the said Claim Application could not be settled. In the mid-February-2015 it instructed it's Advocate to file the present First Appeal. The Applicant states that due to heavy workload, it's Advocate prepared Appeal Memo and sent the same for approval in the last week of February 2015 and the same was approved by Appellant – Insurance Company. However due to heavy workload of claims and its settlement as also due to heavy work of processing the claims in dispute, the Applicant Insurance Company, under a bona fide mistake did not send approval of appeal memo to its advocate. The Applicant states that in Summer vacation of 2015, in routine check of matters, it was found by both the Applicant Company and its lawyer that though the Appeal memo is ready and approved, its approval is not communicated to

lawyer. For this reason, the appeal could not be filed in time. The Applicant states that since the Applicant has a good case of defense in the matter which was not reaching settlement, therefore, now the Applicant filing and prosecuting the present appeal.”

4. On the basis of these facts, the learned Counsel for the Applicant submits that, this Hon’ble Court be pleased to condone 394 days delay in filing First Appeal. He submits that, if delay is not condoned irreparable loss will be caused to them.

5. Bare reading of the entire Civil Application and paragraph 8 shows that there is delay on the part of the Applicant to file the First Appeal because of heavy workload of claims and its settlement in their office. Not only that the Applicant has pleaded in para 8 that the delay caused mainly because of corporate procedure which requires obtaining legal opinion and sending it for approval to the decision making authorities for both settlement and appeal filing. Not only that the Applicants were trying to settle the matter with the Respondent-Claimant till the middle of February 2015.

6. It is to be noted that not a single document is placed on record by the Applicant to show that they were trying to settle the matter with the Respondent till February 2015. Moreover, the Applicant has failed to place on record for filing the First Appeal, they have to take approval from how many departments and

how many the days the file was lying with them. This itself shows that the Applicant has filed the present Civil Application in a casual manner. The grounds given by the Applicant in the Civil Application for condonation of inordinate delay of 394 days are not satisfactory.

7. The Apex Court in the matter of **Special Land Acquisition Officer & Anr. Vs. Jose Prazeres de Piedade Pinto**, reported in 2006(2) BCR 773, held that the delay caused because of movement of file from one table to another cannot be considered as a good ground for delay. Para 12 of the said judgment reads thus:

12. The delay merely because it has occasioned in a matter relating to land acquisition case involving public money, condonation thereof cannot be construed as a matter of right to the Government. In case of delay, it is necessary for the Government machinery to furnish the necessary satisfactory explanation for such delay. In case the delay has occurred on account of either wilful acts on the part of the concerned officer/ s or for any other reason, which could even defeat the rights of the Government or the acquiring body in relation to the provision for appeal against the award passed by the Reference Court, the mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal. In the case in hand, as already observed above, merely stating that the file moved from one office to another, either for opinion or for preparation of financial report, no explanation has been placed on record as to why it took particular number of days for obtaining either the opinion of the Law Department or for preparing the financial implication report by the Executive Engineer. It apparently discloses total failure on the part of the applicants in explaining the cause for the delay of 281 days in filing the appeal as well as 51 days' delay in filing the application for condonation of delay.

The apex court in the matter of **Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr.**, reported in 2012 ALL SCR 892 held that the delay attributable to impersonal machinery and bureaucratic methodology

cannot be a ground for condonation of delay. Para 13 of the said judgment reads thus:

“13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

8. Considering the submission made by Learned Counsel for the Applicant, the reason given in the Civil Application and the law declared by the Apex Court, I do not find any substance in the Civil Application. Hence, the following order is passed:

- (a) The Civil Application for condonation of delay stands rejected.
- (b) In view of rejection of the Civil Application for condonation of delay nothing survives in the First Appeal. Hence, registration of the First Appeal stands rejected.
- (c) Consequently, the Civil Application for stay stands dismissed as infructuous.

(K.K.TATED, J.)