

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1835 OF 2016
IN
FIRST APPEAL STAMP NO. 20920 OF 2015

Smt.Priya Uday Jondhale and ors. .. Applicants
Vs.
Shri Bhimgonda Malgonda Patil and anr. .. Respondents

Mr.Satyejet Shirke I/b Mr.Jayant J.Bardeskar, for the Applicants.

CORAM : K.K.TATED, J.

DATE : 20th AUGUST, 2019

P.C. :

. Heard Mr.Satyejet Shirke learned Counsel for the applicants.

2. By this Civil Application, applicants are seeking condonation of 2 years & 118 days delay in filing First Appeal challenging Judgment and Award dated 03/12/2012 passed by MACT, Kolhapur in MACP No. 481 of 2007.

3. Learned Counsel for the applicants submits that the Tribunal by its order dated 03/12/2012 held that original claimants are entitled to recover Rs.8,13,584/- by way of compensation. He submits that the trial Court passed order directing respondents to pay interest @ 7.5% per annum on the amount of compensation till its actual realization. He submits that it is nowhere stated by the trial Court since when the applicants are entitled to interest. Hence, the applicants filed M.A.C. Diary Application No. 20 of 2014 before the Member, MACT, Kolhapur under Section 152 of CPC praying for correction and clarification in clause No.3 of the judgment and award dated 03/12/2012, that interest @ 7.5 % on the amount of compensation should be considered from the date of application till its realization. He submits that the said application was rejected by the trial Court on 16/04/2015. He submits that meanwhile, they filed application for recovery of entire amount. He submits that applicant received entire compensation Rs.8,96,800/- on 13/04/2013.

4. Learned Counsel for the applicant submits that because of pendency of the M.A.C. Diary Application No. 20 of 2014, there is delay of more than 2 years in filing the First Appeal.

5. Learned Advocate for the applicant submits that, they have good chance of success in the present proceedings. He submits that 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. He submits that if delay is not condoned, irreparable loss will be caused to them.

6. I have heard learned Counsel for the applicants. It is to be noted that in the present proceedings, though judgment and award passed by the Tribunal on 03/12/2012, applicant filed present First Appeal before this Court in the month of July 2015 with the delay of more than 2 years and 1 month 8 days. Filing of application for clarification of the order cannot be said to be a ground for condonation of delay. Apart from that,

though applicants received compensation amount of Rs.8,96,800/- on 13/04/2013, the applicant in paragraph 7 of the Civil Application made a statement that, for arranging Court fee and other expenses, there was delay on their part to file present Appeal in this Court. Paragraph 7 of the Civil Application reads thus :

“7. It is further stated that thereafter the Applicant applied for the certified copy on the said application on 10/06/2015 and received the same on 17/06/2015 in first week of July, 2015 the applicant approach the Advocate in the Hon'ble High Court and after obtaining the opinion decided to challenge the Judgment and Award dated 03/12/2012 by way of First Appeal and also the order dated 16/04/2014 after arranging for the Court fees and other expenses and after getting the certified copy of the Trial Court the Advocate got the paper ready and thereafter the present First Appeal came to be filed.”

7. It is to be noted that though the entire amount was received by applicants in the month of April 2013, the applicant has given reason of financial crisis, therefore, that cannot be considered as ground for condonation of delay.

8. In view of above mentioned facts, I do not see any reason to entertain present Civil Application. Hence, following order.

ORDER

Civil Application is rejected.

(K.K.TATED, J.)