

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3907 OF 2017
IN
FIRST APPEAL (ST) NO. 22311 OF 2017**

Rahul Dattatraya Undre and Anr. Applicants.

Vs.

Meena Kiran Birla and Ors. Respondents.

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Mr. Rupesh Gadekar for the applicants.
None for the respondents.

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**CORAM : K.K.TATED, J.
DATED : AUGUST 19, 2019**

P.C.

Heard Learned Counsel Mr.Rupesh Gadekar for the
applicants.

2. Though the respondents are duly served, no one is appearing on behalf of them when the matter is called out.

3. By way of the Civil Application, applicants, owner of the vehicle and the driver, seeking condonation of one year and 266 days delay in filing the First Appeal, challenging Judgment and Award dated 12/08/2015 passed by the Motor Accident Claims Tribunal at Pune in Motor Accident Claim Petition No.586 of 2009.

4. The Learned Counsel for applicant submits that both the applicants have appointed Advocate in Trial Court and signed their Vakalatnama. He submits that inspite of executing Vakalatnama, the concerned Advocate failed and neglected to remain present when the matter was called out for final hearing. He further submits that the said Advocate, without giving any notice to the applicant, withdrawn his appearance in Trial Court. It is against the practice. In support of this contention, he relies on the Judgment of our High Court int he matter of *Govinda Bhagoji Kamable and ors. v/s. Sadu Bapu Kamable and others*, 2005 (1) Mh.L.J. 651.

5. The Learned Counsel for the applicant submits that, they learnt about the filing of the First Appeal by the Insurance Company, when they received notice dated 16/05/2017 from the Advocate for Insurance Company. At that time, they learnt that the Trial Court had passed the impugned Judgment and Award against them. Thereafter, they immediately, filed the First Appeal. He submits that in the interest of justice, this Hon'ble Court may be pleased to condone the delay in filing the First Appeal and matter be decided on its own merits. He

submits that if delay is not condoned, irreparable loss would be caused to the applicants.

6. It is to be noted that, in the present proceedings, the applicants have appointed the Advocate in the Trial Court, but, without giving any notice to the applicants, withdrawn his appearance. Hence, matter proceeded ex parte against the applicants. First time they learnt about the Judgment and Award passed by the Tribunal, when they received notice dated 15/05/2017 from the Advocate for Insurance Company. Considering these facts, I am of the opinion that applicants have made out case for following order :-

ORDER

- (a) Delay in filing First Appeal is condoned.
- (b) Applicant to deposit the cost of Rs.5,000/- in the Registry of this Court on or before 31/08/2019, failing which, Civil Application shall stand dismissed without further reference to the Court.
- (c) If cost is deposited in time, the respondents/claimants are permitted to withdraw the same without furnishing any security.
- (d) Civil Application stands disposed of accordingly.
- (e) No order as to costs.

(K.K.TATED, J.)