

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION NO.158 OF 2019

IN

CIVIL APPLICATION NO.2293 OF 2017

IN

FIRST APPEAL ST. NO.11113 OF 2017

Reliance General Insurance Co. Ltd. Akola Branch, Thr. Its Manager, Nagpur

-vs-

Savita w/o Sadashiv Rakh and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri D. N. Kukday, Advocate for applicant.

Shri S. S. Saoji, Advocate for respondent Nos.1 to 5.

CORAM : A.S.CHANDURKAR, J.

DATE : February 15, 2019

Perused contents of the application which is supported by the affidavit of the learned counsel for the applicant. Hence accepting reasons mentioned therein the order dated 16/01/2019 is recalled and the proceedings are restored to file.

Misc. Civil Application is allowed and disposed of.

Civil Application (CAF) No.2293 of 2017

Prayer is to condone delay of 509 days in filing the first appeal. In the appeal a challenge has been raised to the judgment of the Claims Tribunal dated 05/09/2015 in M.A.C.P. No.79/2010. In the application

for condonation of delay it has been stated that after the proceedings were decided the certified copy was applied for on 09/09/2015 and it was received on 06/10/2015. Thereafter the certified copy was forwarded to the office of the applicant at Amravati after which other relevant papers were called for and they were then forwarded to the Nagpur office. After obtaining necessary advice the appeal came to be filed on 24/05/2017.

Reply has been filed by the claimants opposing the application. It has been stated that after the award was passed on 05/09/2015, the claimants had filed Execution Case No.45/2015. In those proceedings the present applicant was duly served with the notice of execution on 03/11/2015. Despite knowledge of the said award and its execution, the appeal in question was filed only on 24/05/2017. It is thus stated that the applicant has not made out any case for condoning the delay.

Heard the learned counsel and perused the application as well as reply. The certified copy of the impugned judgment was applied for within limitation and despite receiving the same on 06/10/2015 and

having knowledge about the execution proceedings on 03/11/2015, the appeal has been filed on 24/05/2017. There is no explanation for this period from November 2015 to 24/05/2017. This period is of almost one and half year. It is thus found that the delay of 509 days has not been satisfactorily explained. The delay is therefore not liable to be condoned. The application is accordingly rejected.

In the light of the award passed in M.A.C.P. No.79/2010 it is open for the applicant to safeguard its interests in the light of the law laid down in ***National Insurance Co, Ltd. vs. Challa Bharathamma and ors. AIR 2004 SC 4882.*** The contentions of parties in that regard are kept open before the executing Court. The statutory deposit of Rs.25,000/- be returned to the appellant with accrued interest in case the entire decretal amount has been deposited with the Claims Tribunal.

JUDGE