

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

CIVIL APPLICATION [F] NO. 3772/2018
IN FIRST APPEAL ST. NO. 3754/2018.

Vinayakrao Mansaram Ramteke.

-VERSUS-

Mrs. A. kalyani and another.

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

Court's or Judge's Orders

Ms. M.S. Pathade, Advocate for Applicant.
Shri R.P. Joshi, Advocate for the Non-applicant No.1.
Shri B.P. Bhatt, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI, J.

DATE : 11.12.2019.

Heard.

2. The applicant of Accident Claim Petition No.1048/2013, seeks condonation of delay of 349 days caused in filing First Appeal in terms of Section 173 of the Motor Vehicles Act.

3. In order to demonstrate sufficient cause, the applicant has pleaded that he was not aware about the decision rendered by the Tribunal, as well as he was not keeping well during mean period. Secondly, it

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is contended that though the applicant learn about the decision of the Tribunal, however, for want of sufficient funds to pay court fees stamp in the appeal, the delay has been caused, which is sought to be condoned.

4. Non-applicant no.1 has strongly resisted to condone the delay vide reply dated 18.11.2019. He expressed doubts about the bonafides of the applicant. According to him, the applicant was well aware about the decision of the Tribunal, as well as he was having sufficient funds to pay court fee. Precisely, the application is lack of bonafides and for want of sufficient cause, deserves to be rejected.

5. The applicant has pleaded the cause for delay in paragraph nos. 3 and 4 of the application. Ignorance of award and want of sufficient funds to pay court fees are two reasons canvassed to term it as sufficient cause. The non-applicant no.1 has demonstrated that the applicant was well aware of the decision as well as he was having funds to pay court fee. In a bid to disprove applicants' case, the respondent no.1 has produced a copy of application

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dated 30.03.2017, filed before the Tribunal for refund of compensation, which was refunded to him in the month of April, 2017. From said application, it is evident that applicant has sought withdrawal of compensation amount through his Advocate. Moreover, the respondents' contention that in the month of April, 2017 the entire compensation amount was received by the applicant, is not denied.

6. In the wake of such facts, one has to see whether the applicant has made out a "sufficient cause" within the meaning of Section 5 of the Limitation Act. The impugned award has been passed by the Tribunal on 19.11.2016. The applicant through his Counsel sought withdrawal of the amount of compensation in the month of March, 2017 and had received the said amount in April, 2017, whilst this application is filed on 01.02.2018. Even if it is assumed that the applicant was ignorant of the decision of the Tribunal till March, 2017, however, thereafter, he was aware of the said decision as well as on receiving compensation was having sufficient funds to pay necessary court fee. Therefore, the reasons

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cited by the applicant are demonstrably incorrect. The Hon'ble Supreme Court in case of **Pundlik Jalam Patil .vrs. Executive Engineer, Jalgaon Medium Project and another (AIR 2008 SC[Supp] 1023)**, has ruled that a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay.

7. The learned counsel for non-applicant no.1 in resistance, relied on the following judgments :

- [1] **Mr.Bolu Bandodkar .vrs. Daina Zita Agnela and others [2015 (6) All MR 395];**
- [2] **Rajendra Namdeorao Akre .vrs. Rajkumar Bhalerao Balbudhe and another [2016 (7) All MR 86];**
- [3] **Mohd. Sahid and others .vrs. Raziya Khanam and another [AIR 2018 SC 4724];**
&
- [4] **Vasant Vithal Gawand .vrs. Shantaram Tukaram Gawand and another [2016 (2) All MR 235].**

8. One can cull out the proposition from above cases that the delay cannot be condoned for mere asking, the cause must be genuine and satisfactory, the applicant has to show due diligence, cost cannot be a substitute for condonation of delay in absence of reasons, and statement of incorrect facts and negligent approach of the applicant dis-entitles

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him to seek condonation of delay.

9. Bare perusal of the application discloses that the cause pleaded is quite vague. The applicant never stated as to when he got knowledge of the decision, and he was suffering from which ailment and its period. He never stated that though he received compensation amount, still due to other reason he was not able to deposit the court fee. The applicant has suppressed that he received compensation amount long back in the month of April, 2017 from the Tribunal. It is a settled position of law that in absence of any proper explanation for delay, the same cannot be condoned merely for asking. After efflux of statutory period of limitation the valuable right accrues in favour of other side, which cannot be taken away.

10. Though a liberal approach is required to be taken, however, if there are lack of bonafides, the applicant does not deserve for leniency. Precisely, the cause canvassed for delay is untrue and the applicant has vaguely stated about the delay which does not stand to the reason.

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11. The learned counsel for non-applicant no.1 submitted that only to gain benefit of latest decision of the Hon'ble Supreme Court in case of Pranay Sethi, the applicant has stated a false and artificial ground to condone the delay. Be that as it may, one has to see the reasons which are canvassed by the applicant for condonation of delay.

12. In my considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without probing further. On inquiry, as to whether the averment made in the application reveals sufficient cause, it is noted that the cause canvassed is untrue and particularly destroyed by the documentary evidence tendered by other side. The application is totally lacking of bona fides and therefore, deserves to be rejected. Hence, the application stands rejected. Consequently, the appeal also stands dismissed. No order as to costs.

JUDGE

Rgd.