

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

Civil Application (CAF) No.19/2019 in First Appeal Stamp No.4762/2018

Chaitram S/o Chinduji Dhoble
Vs.
Pandurang S/o Govinda Wadbudhe and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.R. Kanungo Advocate for appellant
Mr. S.R. Charpe, Advocate for respondents No.1, 2-A to 2-C.

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 25, 2019

The present application has been filed seeking condonation of delay of 3289 days in filing the accompanying appeal in order to challenge impugned judgment and order dated 24.12.2008, passed by the Commissioner / Labour Court under the provisions of Section 30 of the Workmen's Compensation Act, 1923. By the said judgment and order, the claim application filed on behalf of the respondents No. 1 and 2, stood allowed and the applicant / appellant was directed to pay compensation of Rs.4,31,672/-, along with 12% interest from 24.03.2002, till realization of the entire amount of compensation. There is no dispute about the fact that the accompanying appeal along with the present application for condonation of delay were filed

in February 2018 and that the appeal suffered from delay of 3289 days.

2. This Court issued notice on the application of condonation of delay on 24.01.2019. The contesting respondents No. 1 and 2 appeared through counsel and opposed the prayer for condonation of delay and further pointed out that the application for condonation of delay could not be entertained by this Court in absence of the certificate as contemplated under Section 30 of the aforesaid Act, being placed on record on behalf of the applicant / appellant. It is pointed out that the applicant / appellant was required to deposit the amount of compensation granted by the Commissioner / Labour Court before the application for condonation of delay and the appeal could be taken up for consideration. On 20.08.2019, this Court passed an order granting time to the applicant / appellant, till 23.09.2019, to deposit the amount and to place such certificate on record.

3. Today when the application for condonation of delay was taken up for consideration, it was pointed out that the applicant / appellant had deposited amount of Rs.2,25,000/-, before the Commissioner / Labour Court and the entire amount was not deposited, as a consequence of which the certificate contemplated under Section 30 of the aforesaid Act is not placed on record. Yet, this Court took up the

application for condonation of delay for consideration. A perusal of the documents on record shows that the impugned order of the Commissioner / Labour Court was passed on 24.12.2008. It is further claimed by the applicant / appellant that due to his counsel not keeping him informed about developments in the matter, he came to know about the impugned judgment and order in the year 2010, when he received a notice from the Commissioner / Labour Court on an application filed by respondents No. 1 and 2 and under Section 31 of the said Act for recovery of the amount granted in their favour. It is then claimed that the applicant / appellant engaged counsel for representation in the said proceedings initiated under Section 31 of the aforesaid Act before the Commissioner / Labour Court. Further, it was claimed that the applicant / appellant received notice about order passed in the said proceedings under Section 31 of the said Act after recovery notice was issued by the Tahsildar. It was claimed that the order passed by the Commissioner / Labour Court on 18.03.2014 came to the knowledge of the applicant / appellant when such notice from the Tahsildar was received and compliance was directed till 06.05.2017 and in case of failure the property of the applicant / appellant was to be attached.

4. It was then claimed that the applicant / appellant contacted his counsel and took papers back

from him to engage another counsel, who also kept the papers from June 2017 to January 2018 with him. Ultimately, when the Tahsildar was to exercise action against the applicant / appellant that he allegedly again took back the papers from said counsel and engaged the present counsel in January 2018 to file the accompanying appeal, which was eventually filed on 24.02.2018. It is also claimed by the applicant / appellant that being an illiterate person he was not aware about niceties of law and, therefore, the delay in approaching this Court was due to bonafide reasons.

5. Throughout the application, the emphasis of the applicant / appellant has been on his illiteracy and the fact that counsel after counsel engaged by him had not performed their duty appropriately, due to which the accompanying appeal had suffered the delay of 3289 days. There cannot be any denial about the fact that the applicant / appellant became first aware about impugned judgment and order dated 24.12.2008, when he received notice in the year 2010, in the proceedings initiated under Section 31 of the said Act. There is no proper explanation as to why the applicant / appellant could not challenge the impugned order immediately in the year 2010 itself. The explanation sought to be given on the ground of alleged illiteracy and the fact that number of counsel did not provide appropriate advice and opinion to the applicant / appellant cannot be accepted and it

becomes clear that sufficient cause for condonation of delay has not been made out at all in the present proceedings.

6. Therefore, without going into the question whether the application for condonation of delay along with appeal could be said to be maintainable before this Court in the absence of certificate placed on record, as contemplated under section 30 of the said Act, this Court deems it fit to dismiss the application for condonation of delay itself on the ground that sufficient cause for condonation of delay is not made out.

7. Accordingly, the application is dismissed.

8. The amount of Rs.2,25,000/- said to have been deposited by the applicant / appellant before the Commissioner / Labour Court shall be disbursed to respondents No. 1 and 2-A to 2-C. The said respondents would be at liberty to recover balance amount as granted them by the impugned judgment and order.

JUDGE