

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

CIVIL APPLICATION NO (CAF) No.3925/2018 in
First Appeal Stamp No.7211/2018
Abdul Rashid S/o Abdul Bashir and another
Vs.

Union of India, through The General Manager, Central Railway, Mumbai CST.

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

Court's or Judge's orders

Mr. P.R. Agrawal Advocate for appellants
Mr. P.S. Khubalkar Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 25, 2019

This is an application for condonation of delay of 863 days in filing the accompanying appeal. The applicants are the original claimants, who had filed the claim application before the Railway Claims Tribunal, seeking compensation in respect of death of their daughter in an incident involving a train.

2. The Railway Claims Tribunal dismissed the claim application of the applicants by judgment and order dated 04.08.2015. It is the case of the applicants that they became aware of the impugned judgment and order sometime in the month of June 2016 and then they approached their counsel for challenging the said order. After the counsel was supplied with all the case papers, the question of payment of court fees in respect of the accompanying appeal arose and it was the

opinion of the counsel that the question as to amount of court fees payable in the context of such an appeal under the Railways Act, 1989, was referred to a Larger Bench and that in the meanwhile steps were taken to file the appeal by paying Court fees of Rs. 25 only.

3. It is specific case of the applicants that they were facing severe financial constraints and that if the court fees was to be paid beyond what was advised by the counsel, it would have been very difficult for them to pursue the challenge against by the impugned judgment and order passed by the Tribunal.

4. The learned counsel for the applicants informed this Court that the reference made to Larger Bench pertaining to amount of Court fees paid in such appeal was decided on 19.07.2018, by the Division Bench of this Court, wherein it was effectively held that the court fees of Rs. 25/- would have been paid.

5. In view of this fact, the application of condonation of delay was filed on 26.03.2018.

6. While opposing the prayer for condonation of delay, learned counsel for the respondent submitted that such belated appeal has been filed by the original claimants only with a view to take benefit of the judgment of the Hon'ble Supreme Court in the case of **Union of India Vs. Rina Devi, AIR 2018, Supreme Court**

2362. It was submitted that the explanation given in the application seeking condonation of delay was not convincing and that, therefore, the application deserved to be dismissed.

7. Having perused the application and circumstances brought to the notice of this Court on behalf of the applicants, it becomes clear that sufficient cause has been made out by the applicants for condonation of delay in the present case. It cannot be said that the facts stated on behalf of the applicants while seeking condonation of delay are either incorrect or that they do not show any bonafide on the part of the applicants.

8. In so far as filing of this application and accompanying appeal by claimants after the judgment of the Hon'ble Supreme Court in case of **Union of India Vs. Rina Devi** (supra), in the present case the application for condonation of delay along with appeal was filed on 26.03.2018, while the aforesaid judgment was rendered by the Hon'ble Supreme Court in the case of **Union of India Vs. Rina Devi** (supra) on 09.05.2018. Therefore, to that extent the contentions raised on behalf of the respondent cannot be accepted.

9. In view of the above, the application is allowed and delay is condoned .

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Heard learned counsel appearing for the appellants. The applicants are claiming that their claim application could not have been dismissed by the Tribunal and the findings rendered were wholly erroneous.

Hence, issue notice for final disposal, returnable in four weeks.

Mr. P.S. Khubalkar, learned counsel waives notice on behalf of sole respondent.

Call for record and proceedings.

JUDGE

MP Deshpande