

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

11 CIVIL APPLICATION NO.259 OF 2019
IN FAST/37756/2018

NATIONAL INSURANCE CO. LTD., THR ITS DIV. MANAGER, AURANGABAD
VERSUS
VIKRAM GANPAT KOKARE AND ANR

...
Advocate for Applicant : Shri Bodade S.R.
Advocate for Respondent No. 1 : Shri Hemant U. Dhage
...

CORAM : M. G. SEWLIKAR, J.

DATE : 08th FEBRUARY, 2021.

PER COURT :

1. Heard Shri Bodade, learned counsel for the applicant and Shri Dhage, learned counsel for respondent No. 1.
2. Delay of 09 days is committed in preferring the appeal. According to Shri Bodade, learned counsel for the applicant the delay was caused on account of administrative procedure. Since Ahmednagar Office has no authority to take decision of preferring appeal, papers were forwarded to Pune Office. Papers were received late therefore, delay was caused in preferring the appeal which is not intentional.
3. Learned counsel Shri Dhage, for respondent No. 1 objected to the condonation of delay on the ground that this is not a sufficient

cause. He therefore, prayed for rejection of the application. He submitted that if at all the Court comes to the conclusion to condone the delay, it may be condoned subject to heavy cost.

4. The applicant has in paragraph Nos. 8 and 9 assigned the cause for delay in preferring appeal. On 26.10.2018 itself papers were sent to the Head Office, Pune for preferring the appeal, but papers were returned late. In completing administrative formalities delay was committed. In the opinion of the Court there is sufficient cause for condonation of delay. Claimants can be adequately compensated with costs.

5. In the case of **Improvement Trust, Ludhiana Vs Ujagar Singh and others -(2010) 6 Supreme Court Cases 786**, it has been held thus :

"It is pertinent to point out that unless mala fides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it out on such technicalities."

Nothing has been brought on record to show that any right is accrued to the respondent because of the delay.

6. Having regard to the law laid down by the Hon'ble Supreme

Court matter cannot be dismissed solely on the ground of delay. At the most what will happen is that the matter will be heard on merits. In view of this, I am inclined to condone the delay subject to cost of Rs. 3,000/-.

7. Shri Bodade, learned counsel for the applicant seeks leave to amend as there is some typographical mistake in the date of accident. Leave to amend is granted.

8. In view of this, delay is condoned subject to cost of Rs. 3,000/-. Cost to be deposited within a period of two weeks from today. Cost to be paid to the claimants.

(M. G. SEWLIKAR)
JUDGE

mahajansb/