

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1521 OF 2021
IN
FIRST APPEAL (ST.) NO.11954 OF 2021

VISHAL
SUBHASH
PAREKAR

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Seema Sanjay Pathare and Anr. ...Appellants
vs.
Union of India ...Respondent

Mr. V.M. More, for the Appellants/Applicants.
Mr. T.J. Pandian a/w. Mr. Dheer Sampat, for the Respondent.

CORAM : N. J. JAMADAR, J.
DATE : OCTOBER 27, 2021

P.C.:

. The learned counsel for the respondent has tendered an affidavit in reply. The affidavit in reply is taken on record.

2. The Interim Application is filed for condonation of delay of one year and 200 days in preferring the appeal against the judgment and order in O.A.No.(IIu)/MCC/0483/2013 passed by Railway Claims Tribunal, Mumbai Bench on 28th June, 2019 whereby the claim application came to be dismissed.

3. The said Claim Application was preferred seeking compensation on account of the death of Mr. Sanjay Anant Pathare, the husband of applicant No. 1 and father of applicant No. 2 in an untoward incident alleged to have occurred on 30th March, 2011.

The Tribunal was of the view that the deceased was not a bonafide passenger and thus the claim application was dismissed.

4. In the application, the applicants aver that the delay was neither intentional nor deliberate. The delay occurred on account of the situation in life of the applicants and Covid 19 pandemic, which intervened. If the delay is not condoned the applicants would suffer an irreparable loss.

6. The learned counsel for respondent has resisted the application by filing an affidavit in reply. It is disputed that the delay is of one year and 200 days only. On the contrary, according to the respondent, there is delay of 615 days in preferring the appeal. The reasons assigned in the application are also stated to be not justifiable. No sufficient cause to exercise the discretion to condone the delay is made out.

7. I have heard the learned counsel for the applicants and the respondent.

8. The applicant Nos. 1 and 2 are the widow and daughter of the deceased, respectively. On account of the death of the deceased, the

applicants found themselves in an adverse situation. In the application there are reasons assigned for the delay in preferring the appeal. It is true that the impugned order was passed on 28th June, 2019 and the appellants were at liberty to prefer an appeal before the commencement of Covid 19 pandemic. However, the adverse situation in life, in which the applicants found themselves on account of the death of the bread earner in the family, cannot be lost sight of. There does not appear to be an intentional delay for want of bonafide. On the contrary, the adverse conditions and poor financial position seem to be primary reason for not preferring the appeal within the stipulated period. Thus the application deserves to be allowed to advance the cause of substantive justice.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The delay in preferring appeal stands condoned.
- 3] Appeal be registered.
- 4] The application stands disposed of.

(N. J. JAMADAR, J.)