

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3801 OF 2016
IN
FIRST APPEAL (ST.) NO.24410 OF 2015
WITH
CIVIL APPLICATION NO.3229 OF 2018**

Shri Hanamanth Albal & Anr. Applicants

Vs.

Shri. Abhijit alias Abhiman Tirsingh Respondents
More & Anr.

Ms. Nilima C. Sarvagod i/by Onkar Warange for Applicant.
Mr. Mahendra Agavekar a/w Shraddha Chavan for Respondent No.1.

**Coram : MADHAV J. JAMDAR, J.
Date : 22ND DECEMBER, 2021**

P.C.:

1. Heard Ms. Nilima Sarvagod, learned advocate appearing for the Applicants and Mr. Mahendra Agavekar, learned advocate appearing for Respondent No. 1.

2. This Civil Application is filed seeking condonation of delay of 77 days in filing the appeal challenging the judgment

and award dated 15th April, 2015 passed by the Commissioner of Employees Compensation, Mahad.

3. It is the contention of Mr. Agavekar, learned counsel appearing for Respondent No. 1 that the delay is not of 77 days but much more. He submitted that as per Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as the "Act"), the period of limitation for an appeal under the said Section is 60 days and no appeal by an employer under Clause (a) of Section 30(1) of the said Act shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. He submitted that the said amount was actually deposited on 31st July, 2017 and accordingly receipt dated 31st July, 2017 has been produced alongwith additional affidavit dated 27th January, 2020, which has been tendered in this Court today. It is the submission of Mr. Agavekar that for the purpose of limitation, it has to be considered that the impugned judgment and award dated 15th April, 2015 has been challenged on 31st July, 2017 and therefore there is delay of about two years and 3½ months.

4. On the other hand, Ms. Nilima Sarvagod submitted that the First Appeal was lodged in this Court on 3rd September, 2015. Thus, according to her, the delay is only of 77 days. She submitted that the requirement that memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against is complied with subsequently on 31st July, 2017. However, for the purpose of limitation, the date of filing of appeal should be taken as 3rd September, 2015. In the additional affidavit dated 27th January, 2020, which has been tendered today before the Court, the applicants have explained that during the relevant time, the Advocate for the applicants have undergone surgery and he was advised complete bed rest and therefore the advocate was not in a position to guide the applicants about the requirement of depositing the amount of compensation before the trial Court and the same is mandatory requirement. It is further stated in the affidavit that as soon as the applicants' came to know that the mandatory provision of depositing of the compensation

amount before the trial Court was not followed, the steps were taken and entire decretal amount alongwith interest was deposited in the trial Court on 31st July, 2017. She submitted that not complying with the said mandatory provision, is not intentional and therefore, delay be condoned.

5. It is admitted position that the impugned judgment and award is dated 15th April, 2015. The present appeal is lodged in this Court on 3rd September, 2015. On 31st July, 2017, the entire decretal amount was deposited in the trial Court and accordingly receipt dated 31st July, 2017 was issued. It is also admitted position that the said entire decretal amount as deposited by the applicants is withdrawn by the Respondents.

6. In these circumstances, I am not going into the issue of the length of delay. The delay may be of 77 days or much more, the reasons set out in the additional affidavit that the learned Advocate appearing for the applicants had undergone surgery and was not in a position to guide the applicants is not denied by Respondent No. 1, who is the contesting Respondent.

The contents of the additional affidavit although have been served on the Advocate appearing for Respondent No. 1 earlier have not been controverted. In these circumstances, I am inclined to grant the Civil Application for condonation of delay.

7. The Civil Application is allowed and disposed of as such.

(MADHAV J. JAMDAR, J.)