

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.23 OF 2017**

IN

FIRST APPEAL [STAMP] NO.30357 OF 2016

United India Insurance Company Limited] Applicant

Vs.

Shobha Ashok Jadhav and others.] Respondents

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Mr. Rahul Mehta i/b K.M.C. Legal Venture, for Applicant/Appellant.

Mr. S. S. Vidyarthi a/w Ms. Ruchika Dave, for Respondents No.1 to 3.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 30th MARCH, 2021.

P.C.

1. This is an application for condonation of delay of 1819 days in filing the appeal against the impugned judgment and award passed by the learned Chairman, M.A.C.T, Mumbai on 12th July, 2011 in M.A.C.P No.1090 of 1999.

2. Heard Mr. Mehta, learned Counsel for the applicant.

3. Learned Counsel for the applicant has drawn my attention to paragraph 3 of the application wherein it is mentioned that after delivery of the judgment and award on 12th July, 2011, application for certified copy itself was made on 26th September, 2016 i.e after five years. There is no justification as to why there was such a long delay in making an application for obtaining certified copy of

the impugned judgment and award. From the tenor of the application, it is quite apparent that the concerned officers of the United India Insurance Company Limited simply passed the buck by shirking their responsibilities in ensuring that the appeal is filed as expeditiously as possible.

4. On the other hand, Mr. Vidyarti has strongly objected the prayer of the applicant by contending that the claimants have been deprived of their legitimate right to get the compensation for a long period of 23 years i.e from the date of the accident.

5. In order to buttress his submissions, Mr. Vidyarthi has pressed into service a decision of the Hon'ble Supreme Court in the case of **Amalendu Kumar Bera and others Vs. State of West Bengal, (2013) 4 Supreme Court Cases 52**. He drew my attention to paragraph 10 of the said judgment which reads thus;

“10. In the instant case as noticed above, admittedly earlier objection filed by the Respondent-State under Section 47 of the Code was dismissed on 17.8.2010. Instead of challenging the said order the Respondent-State after about one year filed another objection on 15.9.2011 under Section 47 of the Code which was finally rejected by the executing court. It was only after a writ of attachment was issued by the executing court the respondent preferred civil revision against the first order dated 17.8.2010 along with a petition for condonation of delay. Curiously enough in the application for condonation of delay no sufficient cause has been

shown which entitle the respondent to get a favourable order for condonation of delay. True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there is serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the decree holder puts the decree in execution. As noticed above, the decree passed in the year 1967 was in respect of declaration of title and permanent injunction restraining the Respondent-State from interfering with the possession of the suit property of the appellant-plaintiff. It is evident that when the State tried to interfere with possession the decree holder had no alternative but to levy the execution case for execution of the decree with regard to interference with possession. In our opinion their delay in filing the execution case cannot be a ground to condone the delay in filing the revision against the order refusing to entertain objection under Section 47 CPC. This aspect of the matter has not been considered by the High Court while deciding petition for condoning the delay. Merely because the Respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of 'sufficient cause' delay shall not be condoned".

6. No doubt, normally, a liberal approach is taken while condoning the delay and the matters are adjudicated upon merits. However, the parties seeking condonation of delay must show sufficient cause which lacks in the instant case. Rather, it is apparent from the application itself that the applicant was so negligent and lethargic that it took five years to file an appeal.

7. The ratio laid down in the case of **Amalendu Kumar Bera** (supra) is squarely applicable to the facts of the present case. I, therefore, do not find any merit in the application and hence, it stands rejected.

FIRST APPEAL [STAMP] NO.33057 OF 2016

a/w

CIVIL APPLICATION NO.24 OF 2017

1. In view of the rejection of the application for condonation of delay, appeal shall stand dismissed.
2. Liberty to the respondents-claimants to withdraw the entire amount of compensation with accrued interest.
3. In view of dismissal of the appeal, pending applications, if any, shall stand disposed of.

[PRITHVIRAJ K. CHAVAN, J.]