

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 1908 OF 2019
IN
APPEAL (L) NO.577 OF 2019**

Union of India,
Through Chief Commercial Manager
and anr. ... Applicants/Appellants
Vs.
M/s Prakash Express Cargo and anr. ... Respondents

Mr.Chetan Chandulal Agrawal, Advocate for the Applicants/
Appellants.
Mr.Rajesh Omprakash Gupta, Advocate for Respondent No.1.

**CORAM : R.D.DHANUKA &
V.G.BISHT, JJ.
DATE : APRIL 05, 2021.**

P.C. :

1. By this notice of motion applicants seeks condonation of delay of 61 days in filing appeal.

2. The impugned order was passed on 11th September, 2019. Admittedly, no application for certified copy was made by the applicants. The appeal was lodged on 11th December, 2019.

3. In paragraph Nos.3 to 6 of the affidavit in support it is alleged by the applicants that the matter was discussed with the internal department of the applicants. There was difference of opinion of internal departments, other senior officers and panel

advocates. The matter was discussed with the internal departmental head.

4. For getting the legal opinion matter was again discussed with the legal department for filing the appeal, proposal was submitted to the higher authorities. The time was taken to discuss at the administrative level. Thereafter, the final order was conveyed to the Panel Advocate for drafting and filing the appeal. The matter was allotted to the Panel Advocate. After obtaining final approval present appeal was filed.

5. The Hon'ble Supreme Court in a recent judgment delivered on 19th March, 2021 in case of **Government of Maharashtra Vs. M/s Borse Brothers Engineers and Contractors Private Limited in Civil Appeal No.995 of 2021** has held that condonation in filing appeal is by way of exception and not by way of rule. In a fit case in which a party has otherwise acted *bonafide* and not in a negligent manner, a short delay beyond the period prescribed for filing an appeal in the discretion of the court can be condoned. The order of the Hon'ble Supreme Court considered the similar explanation given by the State of Maharashtra in the matter before the Hon'ble Supreme Court for seeking condonation of delay. It is held that there was no explanation worth contained in the delay application. The said

judgment applies to the facts of this case.

6. In our view the entire gross delay according to the applicants was because of the administrative delay in following the procedure in obtaining opinion from the different heads of the department including the legal department and in view of the difference of opinion among the different department heads. The delay of 61 days is not sufficiently explained. Interim application is accordingly dismissed.

7. In view of the dismissal of the interim application, appeal No.577 of 2019 is also dismissed. No order as to costs.

(V.G.BISHT, J.)

(R.D.DHANUKA, J.)

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