

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CIVIL APPLICATION NO.3641/2018 IN FIRST APPEAL ST. NO.25613/2018
Dharmendrasingh Kapoorsingh Sheorain .vs. Smt. Komal wd/o
Purushottam Nikure and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A. De, Advocate for applicant.
Mrs. R. Singh, Advocate for non applicant nos. 1 to 4.
Mr. H. Thakur, Advocate for non applicant no.5.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 23, 2021

This is an application for condonation of delay in preferring the appeal. The delay is of 202 days.

Heard Mr. De, learned counsel for applicant. Mrs. Singh, learned counsel for original claimant and Mr. Thakur, learned counsel for non applicant no.5 opposed the application. The reply opposing the application for condonation of delay is also filed on record. It appears that the said was filed in the year 2019 itself.

The applicant is employer and non applicant nos. 1 to 4 are the legal representatives of employee-Purushottam.

It is an admitted position that insurance company has already paid the amount of compensation and it is duly received by non applicants. The question is of penalty only. Penalty has to be paid by the employer. The employer is challenging the quantum of penalty by filing appeal.

Whether the employer is liable to pay penalty or not is a matter of final adjudication. That dispute will be decided finally after hearing learned counsel for the applicant-employer as well as counsel for the legal representatives of the employee.

It appears from the record that this application was listed before this Court (Coram: Nitin W. Sambre, J.) on 16.09.2021 and after hearing learned counsel for applicant as well as counsel for legal representatives, the Court has directed the appellant to deposit 50% amount of penalty within six weeks from today, which was the condition precedent in accordance with law. There is no dispute that 50% amount is already deposited.

In my view, the present application is required to be allowed because it is the contention of applicant that employer was not at all liable to pay the amount of penalty and that can be decided during final adjudication. Consequently, I pass the following order.

ORDER

- (i) The application is allowed. Delay is condoned.
- (ii) Non applicant nos. 1 to 4/legal representatives are permitted to withdraw the amount deposited by appellant towards penalty, without prejudice to rights of the appellant.
- (iii) It is made clear that at the time of withdrawal of the amount, the legal representatives need not to give any sort of surety and they have to give only usual understanding.

The application is disposed of.

JUDGE

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Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 24.11.2021
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