

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

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Civil Application No. 4207 of 2017

In

First Appeal (st) No. 10821 of 2017

Shivaji University through its
Registrar Shivaji Vidhyapeeth
v/s.

... Applicant

The Regional Director, Employees
State Insurance Corporation & ors.

... Respondents

Mr. V.M.Walawalkar, Sr. Counsel for the applicant.
Mr. Shailesh S. Pathak for respondents 1 to 3.

CORAM : Anil S. Kilor, J

19th January 2022

P.C.

Heard learned Counsel for the applicant and learned Counsel for respondents 1 to 3. None for respondent no.4.

2. Shri Walawalkar, the learned Senior Counsel appearing for the applicant submits that there is a delay of about 2 years and 355 days in filing First Appeal. It is pointed out that earlier Writ Petition was preferred against the impugned judgment and order dt.03/03/2014

passed by the Employees Insurance Court, Kolhapur, in ESI Application No.4 of 2003 under the bonafide impression that no statutory remedy of appeal is available under the provisions of the said Act. However, on realizing that the statutory appeal is provided, the Writ Petition No.4708/2015 was withdrawn on 01/08/2016. It is pointed out that thereafter immediately the appeal was drafted and it was sent for affirmation but subsequently it was realised that in the transit the appeal was misplaced and, therefore, in the month of February 2017 after getting the said information the appeal alongwith application for condonation of delay was again sent to the applicants for affirmation and as such delay has been caused in filing the appeal.

3. On the other hand, learned counsel Shri Pathak strongly opposed the application and states that delay is inordinate delay and no sufficient cause has been shown in the application for such delay. Accordingly, he prays for dismissal of the application.

4. I have gone through the application and reasons stated in the application. The applicants have fairly stated that in view of the bonafide impression that there is no statutory remedy available, Writ Petition No.4708/2015 was filed and on realizing the mistake the writ petition was withdrawn and statutory appeal was filed. It has also come on record that earlier the copy of appeal and the application for

condonation of delay was misplaced. No reply is filed disputing the above referred facts mentioned in the application. There is no doubt that the delay is an inordinate delay, however, in view of the sufficient cause shown in the application, I am of the opinion that in this matter this Court should adopt liberal view. Accordingly, I pass the following order:

ORDER

- i) The Application for condonation of delay is allowed.
- ii) The delay caused in filing First Appeal is condoned. The office is requested to register the First Appeal and place the same before the Court for admission.

(Anil S.Kilor, J)