

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 3579 OF 2019
(FOR CONDONATION OF DELAY)****ALONGWITH****CIVIL APPLICATION NO. 4365 OF 2016
(FOR RESTORATION)****IN****CIVIL APPLICATION NO. 197 OF 2008****IN****CIVIL APPLICATION NO. 2019 OF 2005****IN****FIRST APPEAL (ST.) NO. 32159 OF 2004****SMT. KANTADEVI W/O. VIJAYKUMAR****THOLE****} APPLICANTS
(ORIG. APPELLANT)****V/S.****SHRI. KHANDERAO RAMBHAU GAIKWAD****AND ORS.****} RESPONDENTS****-----****Mr. R.V. Govilkar a/w. Mr. Mihir Govilkar a/w. Ms. Shaba N.
Khan, Advocate for the applicant-appellant.****Mr. Sanjay P. Shinde, Advocate for respondent no.1.****Ms. Prabha Badadare i/by. Mr. H.G. Misar, Advocate for
respondent no.2.****Smt. Urmila K. Sanil, Advocate for respondent no.4.**

ALONGWITH
CIVIL APPLICATION NO. 2611 OF 2019
(FOR CONDONATION OF DELAY)
IN
CIVIL APPLICATION NO. 4411 OF 2016
(FOR RESTORATION)
IN
CIVIL APPLICATION NO. 2021 OF 2005
IN
FIRST APPEAL (ST.) NO. 32155 OF 2004

ARCHANA VIJAYKUMAR THOLE
@ MRS. ARCHANA R. JAIN } APPLICANT
(ORIG. APPELLANT)
V/S.
SHRI. KHANDERAO RAMBHAU
GAIKWAD & ORS. } RESPONDENTS

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Mr. R.V. Govilkar a/w. Mr. Mihir Govilkar a/w. Ms. Shaba N.
Khan, Advocate for the applicant-appellant.

Mr. Sanjay P. Shinde, Advocate for respondent no.1.

Ms. Preeti Phanse i/by. Mr. Amol Gatne, Advocate for
respondent no.2.

Coram : Sandeep K. Shinde, J.

Closed for orders on : 10th February, 2022.

Pronounced order on : 15th February, 2022.

P.C. :

- 1) Member, Motor Accidents Claim Tribunal, Nashik by judgment and order dated 11th February, 2002 dismissed Claim Petitions No. 393/1994 against all respondents; whereas dismissed Claim Petition No. 392/1994 against respondents no.1 and 2 i.e. Khanderao Rambhau Gaikwad and United India Assurance Company Limited. Smt. Kantadevi Thole, claimant in M.A.C.P. No. 393/1994 preferred First Appeal (St.) No.32159/2004 alongwith Civil Application No.2019/2005, seeking condonation of delay caused in preferring the First Appeal.
- 2) Smt. Archana Vijaykumar Thole, claimant in M.A.C.P. No.392/1994 preferred First Appeal (St.) No.32155 of 2004 alongwith Civil Application No.2021/2005 seeking condonation of delay caused in preferring the First Appeal.
- 3) On 28th February, 2008 Civil Application No. 2019 of 2005 filed by Smt. Kantadevi Thole, for condonation of delay was dismissed in default. Likewise, Civil Application No. 2021 of 2005 filed by Archana Thole seeking condonation of delay came to be dismissed in view of the self-operative order dated 20th September, 2007.

4) Smt. Kantadevi Thole and Smt. Archana Thole filed Civil Applications No.4411/2016 and 4365/2016 for restoration of their delay condonation applications, and for condonation of 8 years 22 days, delay, caused in preferring the restoration applications.

5) Applicant- Smt. Kantadevi Thole and Smt. Archana Thole attributed negligence to Advocate's Clerk, because of which applications were dismissed. Attributions of negligence have been averred in paragraphs no. 8, 10 and 12 of the applications.

6) Mr. R.V. Govilkar, Learned Advocate was appearing for the applicants.

7) Both the applications when came up for consideration before Justice Dr. Smt. Shalini Phansalkar-Joshi on 4th February 2019, Court was of the opinion that, the applicants ought to have preferred two separate Civil Applications; one seeking restoration and another for condonation of delay. Therefore, Smt. Kantadevi Thole filed Civil Application No. 3579/2019 seeking condonation of delay; whereas Smt. Archana Thole filed Civil Application

No. 2611/2019 seeking condonation of delay. Thus, four applications are placed before me for consideration.

8) Heard Mr. R.V. Govilkar, learned Counsel for the applicants in both the appeals and Counsel for the respondents therein.

9) Mr. Govilkar, has taken me through the averments of the applications, to contend that the mistake committed by his Clerk was through oversight and it was neither deliberate nor intentional and therefore although the delay was of eight years plus, the appellants cannot be made to suffer for the mistake and/or carelessness of Advocate's Clerk. Mr. Govilkar, therefore submitted that in the interest of justice, the orders dismissing the Civil Applications No.2019/2005 and Civil Application No.2021/2005 in respective First Appeals be restored to file.

10) Here, it is certain that due to oversight of Advocate's Clerk, Civil Applications in both the First Appeals were dismissed. Therefore, on that count alone, applicant's statutory right of Appeal, cannot be defeated. At the same moment, respondents-original defendants

cannot be endured to defend the proceedings, nearly after twenty two years, which were culminated in their favour without awarding cost to them. Thus, taking overview of the matter, the delay occurred in moving the restoration application can be condoned subject to costs of Rs.20,000/- (Rs. Twenty Thousand) payable to respondents no.1, 2 and 4, each, in Civil Application No.2611/2019 and respondents no.1, 2 and 4 in Civil Application No. 3579/2019 within four weeks from today. Thus, subject to payment of cost, Civil Applications No. 3579/2019, Civil Application No. 4365/2016 in First Appeal (St.) No.32159/2004 AND Civil Application No. 2611/2019 and Civil Application No.4411/2016 in First Appeal (St.) No.32155/2004 are allowed.

11) It is clarified that, if the costs are not paid as directed, the applications shall stand dismissed without further reference to this Court.

12) Subject to above, the applications are allowed and disposed of.

(Sandeep K. Shinde, J.)