

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CIVIL APPLICATION NO.19 OF 2023 IN
MISC. CIVIL APPLICATION (ST.) NO.1425 OF 2022
IN
FIRST APPEAL (ST.) NO.19186 OF 2011**

(Smt. Sudesh w/o Mathuraprasad alias Mathuram Agrawal and ors. Vs. Smt. Devrani w/o
Ramchandra Jindal and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Madhur Deo, Advocate for the appellants.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 08, 2023.

By preferring this application, the appellants are seeking condonation of delay of 2966 days in filing the revision application challenging the order dated 24/01/2012 passed by the Registrar (Judicial) in First Appeal (St.) No.19186/2011 by which the registration of the appeal was rejected.

2. As per the contention of the appellants, the applicants have preferred the appeal and challenged the judgment and award passed by the Motor Accident Claims Tribunal in M.A.C.P No.50/2004. It is further contended that the applicants have engaged Advocate Shri W.D. Mahajan who had personally taken all the steps for filing the appeal.

3. Subsequently, Shri Mahajan, learned Counsel was engaged Advocate Shri P.R. Patil who subsequently appointed as a President of District Consumer Forum. As

he was appointed as a President of District Consumer Forum, the appellants could not get any information about the status of their appeal, and therefore, they could not remove the office objections. Thereafter there was COVID-19 situation and restrictions were imposed by the Government on movements of the public, therefore, they could not take any steps to remove the office objections and hence, the registration of the appeal was rejected.

4. It is submitted on behalf of the appellants that there is just and reasonable cause for condonation of delay due to the fault on the part of the learned Counsel. The appellants shall not be suffered, and therefore, delay be condoned and the appellants be permitted to litigate their cause on merits.

5. Though the respondents are served they failed to appear and contest the application.

6. Heard Shri Madhur Deo, learned Counsel for the applicants. He submitted that it is a part of record that the applicants were represented before the tribunal by Advocate W.D. Mahajan of Chandrapur who collected all the papers for filing the appeal and engaged Advocate P.R. Patil to present the appeal before this Court. Subsequently, Shri P.R. Patil, learned Counsel was appointed as a President of District Consumer Forum, and therefore, there was no communication between Shri P.R. Patil, learned Counsel and the applicants, therefore, the applicants could not get any information regarding the status of the appeal, and therefore, they were unaware

about the office objections raised by the Registrar (Judicial). Hence, delay is caused. He submitted that the applicants could not be suffered due to the fault on the part of the learned Counsel and they be permitted to litigate their cause on merits. Admittedly, the application is not contested by the respondents.

7. Perused the application and the grounds mentioned in the application.

8. It is apparent from the record that one Advocate Mahajan was engaged by the applicants before the Claims Tribunal. The appeal is filed through Advocate PR. Patil who was appointed as a President of District Consumer Forum thus, there was no information received by the applicants regarding the status of their appeal. It is also apparent that as there was no communication between them, they could not get the information about the office objections raised regarding filing of the appeal. Subsequently, there was COVID-19 situation and the restrictions were imposed. The grounds mentioned in the application are supported by the documents which is a part of the record and proceedings before the Court. Admittedly, the applicants could not suffer due to the fault on the part of the Counsel.

9. It is also pertinent to note that in the Appellate Court the presence of the litigants is not required, and therefore, they could not get the information regarding the status of their proceeding, and therefore, they are dependent upon the instructions

received from their respective Counsel. Here as a respective Counsel was appointed as an Officer of District Consumer Forum and it was the main reason, the appellant could not take the steps by engaging other Counsel to remove the office objections.

10. The reasons mentioned in the application is just and reasonable. The appellants are to be permitted to litigate their cause on merits. In view of that liberal approach is to be taken. On the above facts, the application deserves to be allowed and the delay deserves to be condoned.

11. Hence, the application is allowed and the delay of 2966 days is hereby condoned.

MISC. CIVIL APPLICATION (ST.) NO.1425 OF 2022

The Miscellaneous civil application be registered.

2. After registration, issue notice to the respondents, returnable after four weeks.

(URMILA JOSHI-PHALKE, J.)

**Divya*