

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

CIVIL APPLICATION NO.283 OF 2020

IN

FIRST APPEAL (ST.) NO.23283 OF 2019

(MSDCL Vs. Baba s/o Mahadeo Kotamkar (dead) thr. L.R's and ors.)

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

Court's or Judge's Order

Shri D.M. Kale, Advocate for the appellant.
Shri H.S. Dhande, Advocate for respondent No.1.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- APRIL 11, 2023.

Heard.

2. Present application is for condonation of delay which is caused in preferring the appeal against the judgment and award passed by the Commissioner under the Employees Compensation Act by which the present appellant was directed to pay the compensation to the respondents.

3. As per the contention of the appellant that after passing of the judgment which was ex-parte against the present appellant, the appellant had filed Writ Petition No.7382/2017 and this Court granted the stay on the condition that the appellant shall deposit the decretal amount of Rs.6,00,000/- within a period of four weeks from the date of order. Thereafter the said writ petition was dismissed with liberty to the appellant to file an appeal.

4. As the appellant has filed the writ petition he had not filed the appeal, and therefore, delay of 2127 days

is caused in preferring the appeal. For seeking the administrative instructions by the company, the delay is caused which is sufficient cause for filing the appeal, and therefore, there is sufficient and reasonable cause for condonation of delay.

5. Said application is strongly opposed on behalf of the respondent that the delay is not properly explained. The ground mentioned in the application that the appellant could not receive the administrative approval to file the appeal is not a sufficient ground and in view of that the application deserves to be rejected.

6. Heard Shri Kale, learned Counsel for the appellant and Shri Dhande, learned Counsel for respondent No.1.

7. Shri Kale, learned Counsel submitted that as the appellant had filed the writ petition and also deposited the amount as per the directions of this Court. As the said writ petition was pending, the appellant has not preferred the appeal, therefore, the delay is caused. There is just and reasonable cause for condonation of delay. He further submitted that the compensation was granted behind the back of the present appellant as ex-parte order was passed against him so proper opportunity was not granted to the appellant to raise his objection before the Commissioner under the Employees Compensation Act, therefore, in the interest of justice, said opportunity is to be granted by condoning the delay.

8. On the other hand, Shri Dhande, learned Counsel submitted that there is not just and reasonable cause for condonation of delay. He placed reliance on the ***State of Uttar Pradesh thr. Executive Engineer and anr. Vs. Amar Nath Yadav (2014) 2 SCC 422*** wherein the Hon'ble Apex Court held that moving of file from one department to other is not a sufficient cause. It is further held that in identical circumstances in similar type of case which also arose against the award of the Labour Court and the Hon'ble Apex Court refused to condone the delay and dismissed the special leave petition.

9. Perused the application and considered the rival submissions of both the parties, it is well settled that while considering the delay application, sufficient opportunity is to be granted and liberal approach is to be taken to do the substantial justice. The Hon'ble Apex Court also in the case of ***Postmaster General Vs. Living Media India Ltd. (2012) 3 SCC 563*** held that it is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the

Government is a party before us. Thus, considering only ground mentioned in the petition was that the department has not proceeded by granting the necessary approval, and therefore, delay is not condoned.

10. In the present case, the appellant has immediately filed the writ petition which was pending. It is a matter of record that the stay was also granted by this Court during the pendency of the writ petition however, finally the writ petition was dismissed and the liberty was granted to the appellant to prefer an appeal. Thus, main reason for delay is that as the writ petition was pending, appeal was not filed in time. It is well settled that in a matter of condonation of delay when there was no negligence or deliberate inaction or lack of *bona fide* a liberal approach has to be adopted to advance substantial justice.

11. In the present case, considering the grounds mentioned in the application is that as the writ petition was pending, the appeal was not filed. Hence, the reasons appears to be just and sufficient for condonation of delay. It is well settled that while considering the delay application liberal approach is to be taken and pedantic approach is not appreciated.

12. In view of that to do the substantial justice, the delay of 2127 days is condoned subject to the cost of Rs.5000/- (Rs. Five thousand).

13. The costs amount is to be deposited in the name of respondent No.1(a).

FIRST APPEAL (ST.) NO.23283 OF 2019

Heard.

2. Appeal be registered.
3. **ADMIT.**
4. Call for R. & P
5. Place the matter after receipt of R. & P for final hearing at the end of admission board.

CIVIL APPLICATION NO.1893 OF 2022

Heard.

2. This application is for condonation of delay in bringing legal heirs of respondent No.2, on record.
3. Respondent No.2 died on 23/05/2014 but the appellant came to know about this fact on 16/06/2022, therefore, he filed an application for condonation of delay however, delay of 2981 days is caused in bringing the legal heirs of respondent No.2 on record.
4. There is sufficient and reasonable ground to condone the delay.
5. Said application is strongly opposed by the respondents on the ground that the delay is not properly explained.
6. The view of the reasons mentioned in the application is that the appellant came to know about the death of respondent No.2 on 16/06/2022, thereafter he filed application immediately.
7. In view of that delay of 2981 days is condoned.

8. Civil application is disposed of.

CIVIL APPLICATION NO.1892 OF 2022

Heard.

2. In view of the reasons mentioned in the application, the abatement is set aside against respondent No.2.

CIVIL APPLICATION NO.1894 OF 2022

Heard.

2. The appellant is permitted to bring the legal heirs of respondent No.2 on record.

3. The appellant to carry out amendment within stipulated period.

4. Civil application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*