

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 784/2020 IN
FIRST APPEAL STAMP NO. 16266/2019

Pushpa Wd/O Balasaheb Patil And Others

Vs

Union Of India Through The General Manager, Central Railway, Cst Mumbai

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

Court's or Judge's Order

Shri R.G.Bagul, Advocate for the applicants/appellants.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/02/2023.

1. By preferring this application, the applicants are seeking condonation of delay which is caused in filing the first appeal.

2. As per the contention of the applicants, husband of applicant No.1/Balasaheb Patil died in untoward incident occurred on 08/02/2012, when he was travelling from Kodgaon to Nashik by Vidharbha Express. Therefore, all the applicants have filed an application for compensation. However, same was rejected by the Railway Claims Tribunal. The applicants have challenged this judgment and award. However, the delay of 977 days is caused in preferring the appeal. The applicants are belonging to weaker section having financial constraints.

3. It is the contention of the applicants that, due to financial constrains, they could not arranged the amount for Court fee as well as they are not aware about the legal provisions and therefore, they could not filed the appeal within time limit and hence the delay of 977 days is caused in preferring the appeal.

4. It is contended that, just and reasonable cause is mentioned for condonation of delay. Considering the nature of the litigation which is beneficial in nature, therefore delay be condoned and applicants be permitted to litigate their cause on merits.

5. The said application is strongly opposed by the non-applicant/railway, on the ground that reasons mentioned in the application are not justifiable one, hence application deserves to be rejected.

6. In support of his submission, Shri R.G. Bagul, learned counsel for the applicant placed reliance upon the order passed by the Court in *Civil Application (CAF) No.68/2021 in First Appeal Stamp No. 7022/2020* as well as on the decision of this Court in case of *Smt Rajabai Rajreddy Akitwar and others V/s Union of India thr. General Manager, South Central Railway Secundarabad and another passed in CRA No. 76/2016 in F.A. St. No. 6175/2016 decided on 19/07/2018*.

7. He submitted that, the delay is not intentional one. Considering the background from which the applicants are coming from weaker sections and could not arranged the amount for Court fee. Therefore, the delay is caused.

8. Heard both the sides. Perused the application.

9. Admittedly, the applicant No.1 has lost her husband in the said accident and she has no source of income. The applicants were relied upon the compensation amount, which was denied to them by the Railway Claims Tribunal and therefore, present appeal is filed. Though the delay is inordinate, the same is not intentional one. As it is evident from the record that, the applicants are from economically weaker section and as they could not arranged for the amount for depositing Court fee stamp. The right of appeal cannot be denied to them. The right of appeal is a valuable right and they can be permitted to litigate their cause on merits.

10. Moreover, it is settled law that, while considering the delay application, liberal and pragmatic approach is to be taken and not the pedantic approach. In view of the above circumstances, the application for delay condonation deserves to be **allowed**. At the same time, it is to be considered that unnecessarily Railway

should not be saddled with paying the interest for the delayed period, if the appeal is allowed in future.

11. In view of that, the delay is condoned subject to the waiver of the interest, in case, if the appeal is allowed in future.

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Appeal be registered.

Call for record and proceedings.

Stand over after four weeks for final hearing at admission stage.

JUDGE