



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

Civil Application (CAF) No. 3398 of 2023

in

First Appeal St. No. 18742 of 2023

[M.S.R.T.C., Mumbai, through the Divisional Controller, MSRTC, Yavatmal ..vs.. Smt. Manisha Wd/o
Anil Nannaware and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Rohan Chhabra, Advocate for the applicant
Mr. Vivek Awchat, Advocate for respondent nos. 1 to 3, 5 and 6

CORAM : ANIL L. PANSARE J.

DATED : 17-04-2024

By present application, the applicant is seeking to condone delay of 99 days in filing appeal against the judgment and award dated 22-2-2023 passed by the Motor Accident Claims Tribunal, Yavatmal in MACP No. 59/2018.

2. The reasons assigned for delay read as under.

“3. That it is humbly submitted that the award was passed on 22.02.2023. That thereafter some time was required in collecting the certified copies of the award. That the appellant being a public corporation, is required to take instructions and approvals at different levels and therefore some time was required in getting the necessary approvals and legal opinions.

4. That once legal opinion is sought regarding challenging the order of the tribunal the Appellant has to arrange for court fees and security deposit. That once the file is allotted to the counsel some time is also spent in preparing the appeal. The Counsel has sent a letter to the Appellant seeking court fees in the above referred matter on 22.06.2023 and the Court fees was deposited by the

Appellant in the account of the Counsel on 02.09.2023.”

3. As could be seen, the applicant states that after passing award, some time was spent in collecting certified copy, however, time taken is not disclosed. Thereafter time was taken for instructions and approvals at different levels. The applicant, however, has not explained as to how much time was taken at different levels and what instructions were taken and for that purpose, how much time was required. The applicant then states that the counsel preparing appeal issued a letter on 22-6-2023 seeking Court Fees from the applicant which was supplied on 2-9-2023 i.e. after about 70 days. Thus, most of the time is taken in procuring Court Fees.

4. The Supreme Court in the case of ***Ajay Dabra Vs. Pyare Ram and Ors., 2023 SCC Online SC 92***, while dealing with ground of being short of funds to pay the court-fee to condone the delay, has referred to Section 149 of the Civil Procedure Code, 1908, which refers to power to make up deficiency of court fee and accordingly held as under :

“6. It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870. In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to the

incorporation of Section 149 in CPC would explain this aspect.

7.

8.

9. *In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima wherein it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured.....*

10.

11. *We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and*

thereafter removed the defects by paying deficit court fees. This has evidently not been done.”

(emphasis now)

5. Thus, the Supreme Court has held that the appellants could have filed the appeal deficient in court fee and made good subsequently. Nothing prevented the applicant herein from adopting such a mode. The applicant is equipped with panel of Advocates who ought to be aware of the scope of Section 149 of the Code. Thus, justification for delay on account of court-fees is not acceptable.

6. Put altogether, the applicant has failed to show any cause, much less, sufficient cause to not file the appeal in time. There is, thus, no substance in the application. The application is accordingly rejected.

Civil Application (CAF) No. 1153 of 2024

7. By present application, the applicants/claimants are seeking to withdraw the decretal amount deposited by the M.S.R.T.C. Since the application seeking condonation of delay has been rejected, the question of entertaining appeal does not arise. There is, thus, no reason why should the applicants/claimants be not permitted to withdraw the amount deposited by the insurance company. Hence, the application is allowed.

8. The Registry shall disburse the amount strictly in accordance with the award passed by the Motor Accident Claims Tribunal.

(Anil L. Pansare, J.)