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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.10487 OF 2024.

IN

FIRST APPEAL ST. NO. 15028 OF 2024.

Sagar Subhash Patil

...Applicant.

Versus

Bajarang Chandram Kamble And Ors.

...Respondents.

Mr. Gaurav Shenoy i/b. Misbaah Solkar for the Applicant.

Mr. Mukesh Gupta a/w. Ms.Anita Pandey for Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : April 7, 2025.

P. C. :

1. Interim Application has been preferred seeking condonation of delay of 816 days caused in preferring the Appeal.
2. The Appeal challenges the Judgment and Order dated 16th December 2021, passed by the Commissioner, Employees' Compensation and Judge, Labour Court No.1, Kolhapur, wherein the Respondents were granted compensation of Rs.5,09,355/- alongwith interest, on account of the death of their son .
3. The application for condonation of delay pleads that the delay has occurred as the Applicant was completely unaware of the proceedings before the Commissioner for Employees Compensation and he got knowledge of it only when he was served with the notice on

2nd November 2023, about the initiation of execution proceedings and therefore, delay which is occurred is unintentional and should be condoned.

4. The said application has been resisted by learned counsel appearing for the Respondents contending that the explanation tendered is incorrect as initially the notice sent at the Applicant's address was returned due to insufficient address and thereafter new address was furnished which was the correct address. He would further point out that the notice sent by RPAD through the Labour Court was duly served on 12th January 2019, which is evidenced from the acknowledgment. He would submit that the delay is substantial delay which has not been explained and therefore the application ought not to be allowed.

5. I have perused the record and considered the submissions.

6. The explanation tendered by the Applicant is that he was unaware of the proceedings before the Commissioner for Employees Compensation and acquired knowledge for the first time on 2nd November 2023, when the execution proceedings were initiated. The documents tendered by the learned counsel appearing for the Respondent would show that the notice which was sent by RPAD was duly received by the Applicant. Though the learned counsel appearing for the Applicant would submit that the signature on the

acknowledgment card is not that of the Applicant, he has not denied that the address which mentioned on the RPAD acknowledgment is not the correct address. As the notice has been sent to the correct address, there is a presumption that the same has been delivered and constitutes valid service. Further, it is not the case of the Applicant that he is unaware of the accident which had taken place and in fact has also suffered criminal proceedings for the death of son of Respondents.

7. The deceased, at the time of his death, was aged about 19 years and was working with the Applicant. During the course of the employment while washing the vehicle, he suffered an electric shock and expired. The fact that the Applicant was aware of the accident coupled with the filing of the criminal case and service of the notice by the officer of the Commissioner at the correct address of the Applicant would raise a doubt about the explanation tendered that he was unaware of the proceedings before the Commissioner.

8. Assuming *arguendo* that it is only on 2nd November 2023, that he acquired knowledge of the *ex parte* order, there is no explanation tendered for the period from 2nd November 2023, till the filing of the Application on 2nd April 2024. It is well settled that it is not necessary to explain each and every days delay, however, the explanation tendered should be sufficient to condone the delay. In the present case the delay is of 816 days and the only explanation is lack of knowledge, which is

successfully controverted by the documents on record and especially the Postal acknowledgment, which shows the receipt of the notice served by the Labour Court on 12th January 2019. The impugned order also records that notice was duly served upon the Applicant.

9. As regards the decision relied upon by learned counsel appearing for the Applicant in the case of ***Inder Singh Vs. the State of Madhya Pradesh***, there can be no quarrel with the proposition that has been laid down that the major aspect which is required to be kept in mind is that if in a particular case the merits have to be examined, it should not be scuttled merely on the basis of limitation. In that case the issue arose out of the dispute over the title of land between the private party and the State and it is in that context that the observations have been made by the Hon'ble Apex Court.

10. In the present case the delay is of 816 days in filing an Appeal against the impugned Order by which compensation has been paid for the death of 19 year old boy, who was working with the Applicant. The explanation tendered is not sufficient to condone the delay and on the contrary shows negligence on the part of the Applicant in defending the proceedings when the same were pending before the learned Commissioner.

11. In light of the above, I find no reason to condone the delay of 816 days caused in preferring the Appeal. Resultantly, Interim Application

stands dismissed.

12. In view of the dismissal of the Application, First Appeal does not survive and stands dismissed.

[Sharmila U. Deshmukh, J.]