

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.13371 OF 2024
[FOR CONDONATION OF DELAY]**

WITH

**INTERIM APPLICATION NO.13412 OF 2024
[FOR WITHDRAWAL OF AMOUNT]**

WITH

FIRST APPEAL (ST) NO.23223 OF 2024

Akashdeep Agarwal

... Applicant

V/s.

Tarabai Sampat Waghmare and others

... Respondents

Mr. Pratap Sampat a/w. Advocate Bharti Suvarna i/b.Aarti Suvarna	Advocate for the Applicants.
Ms. Kavita Anchan a/w. Zubair Zariwala	Advocate for the Respondents.

CORAM : S.M. MODAK, J

DATE : 15th October 2025.

P.C. :

Heard learned Advocate for the Applicant and learned Advocate for Respondent Nos.1 and 2 – Claimants.

2. It is true the impugned order came to be passed by the learned Commissioner on 29th November 2018. It is true instead of preferring an appeal as contemplated under Section 30 of the Employees Compensation Act, the Applicant has filed the following proceedings one after another.

- 1) Writ Petition No.8664/2019. This was disposed of 23rd April 2024. Liberty was granted to file the substantive appeal. The period spent is to be considered while considering the question of condonation of delay.
- 2) Thereafter, the Appellant instead of filing an appeal filed the Writ Petition No.10106/2024 before the Division Bench. It was disposed of on 22nd July 2024.
- 3) Thereafter, they have filed a review petition challenging the order dated 22nd July 2024. Still it is pending. Though learned Advocate for the Applicant tried to submit that it is at pre-admission stage, unless and until that review application is withdrawn, the Court cannot hear the present application.
3. At this stage learned Advocate Sampat undertakes to withdraw that review application. It is accepted. Let on the next date the necessary documents be produced.
4. On this background this delay condonation application is filed. There is delay of 49 days. It is opposed on behalf of Respondent Nos.1 and 2 by filing an affidavit. In fact this Court on 8th May 2025 granted liberty to the Applicants to take out interim application for amendment of delay condonation application for placing correct facts and days of delay. In fact the Applicants ought to have filed an interim application. Instead of that additional affidavit is tendered

across the bar. It is taken on record. Copy is given to other side. In the said additional affidavit all the events are narrated. Court is not inclined to insist on the procedure. Still there is an averment in the affidavit that the delay is for 49 days. In fact it is incorrect. The Court is compelled to record the conduct on behalf of the Applicant. In fact the delay is for much more period but still Court is not inclined to insist upon the necessary pleadings to correct days of delay. Court has taken this approach only for the reason that the main reason for condonation of delay is filing of other proceedings. Time spent on such proceedings can be a ground for condonation of delay.

5. In fact, Section 14 of the Limitation Act also mentions that there should be bonafide prosecution of the earlier proceeding. Even Court is not inclined to insist on the said necessity. One can say that party can take an appropriate proceeding even by challenging the order passed by the learned Single Judge. Hence, I have not taken a narrow view of the issue and I am inclined to condone the delay. Hence, the order:

ORDER

Interim Application is allowed in terms of prayer clause (a). It is disposed of.

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6. Appeal be listed for admission. It is true as per Section 30 of

the Employees Compensation Act, the appeal can be admitted only if there is substantial question of law. Let the parties to address the Court on the next date.

7. Stand over to **18th November 2025.**

Interim Application No.13412 of 2024

8. Heard learned Advocate for the Applicants-Claimants and learned Advocate for Respondent Nos.1 and 2. The learned Commissioner as per the judgment dated 29th November 2018 has directed these Respondents to pay compensation of Rs.8,96,000/- along with 12% interest. The amount of Rs.8,96,000/- is already deposited before the Labour Court. This compensation is awarded for death of Shivraj Sampat Waghmare who was working as an X-ray technician in the hospital. While returning home he died in a vehicular accident. There was delay in filing appeal. Today it is condoned. Now the appeal will be heard at the stage of admission on the next date.

9. According to learned Advocate for the Claimants they are fighting for getting compensation since 2018 and they are mother and brother of the deceased. Respondent No.3 – Sampat is the father of the deceased and there is submission that he has not participated in the proceedings before the Commissioner.

10. There is an opposition for withdrawal for the reason that the

claim is fraudulent. Mr. Sampat has read the averments in the affidavit-in-reply. He has also relied upon the observations in case of *Divisional Manager JKSFC Bhaderwah v/s. Mohammad Sharief*. The amount of Rs.8,96,000/- is already deposited. His submission is prayer for withdrawal can be considered only when the appeal will be adjudicated.

11. He also invited my attention to the order dated 18th July 2024 passed by the learned Commissioner that is on Page-43 of the withdrawal application. Learned Commissioner has decided not to proceed in execution in view of the fact that appeal is to be filed in this Court as per the liberty. His contention is the present application for withdrawal is not maintainable because the Court is seized of the delay condonation application. That application is already allowed today. He also placed reliance on the provisions of Section-8 of the Employees Compensation Act. According to him even the issue of succession is also involved. Section-8 of the Employees Compensation Act is applicable when the proceedings were at the initial stage. Now the proceedings are already decided.

12. I am not inclined to accept the objections raised on behalf of the Respondent Nos.1 and 2. The issue of succession has to be argued before the learned Commissioner. There is also plea that claim of the claimants is fraudulent. This is on the basis that deceased was not supposed to attend the night call. All the contentions are not sufficient to restrain me from passing the order

for withdrawal. These contentions can be considered if the Appellant will show substantial question of law.

13. Learned Commissioner has decided the matter on merits after hearing both the sides.

14. The claimants were fighting for compensation since 2018. They cannot be denied all the benefit which is granted to them after the fulfilled trial. Subject to undertaking it can be allowed. If the claimants will change their address of residence, they can be asked to furnish fresh address. In view of that following order is passed:

ORDER

- (i) The Application is allowed.
- (ii) Respondent Nos.1 and 2 are permitted to withdraw Rs.8,96,000/- on furnishing usual undertaking.
- (iii) They are directed to furnish change in the residential address, if any.
- (iv) Interim Application is disposed of.

15. Appeal be listed on **18th November 2025** for admission.

(S.M. MODAK, J.)