

JPP

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

CIVIL WRIT PETITION NO. 3196 OF 2012

Smt. Alka Madhukar Polekar & Ors. ... Petitioners.

V/s.

M/s. Road Heavy Cargo Movers & Ors. ... Respondents.

Ms. Chaitrali Deshmukh for the Petitioners.

Mr. H.G. Misar for Respondent 2.

CORAM : N.M. JAMDAR, J.

DATE : 29 SEPTEMBER, 2015.

P.C. :-

By this Petition the Petitioners challenge the order passed by the Labour Court, Pune dated 29 November 2011 rejecting the Application filed by the Petitioner for condonation of delay in proceedings taken under Workmen's Compensation Act.

2. By order dated 21 August 2013 the Court had indicated that the Petition will be heard finally at the stage of admission. The Respondents are served. Accordingly, Petition is taken up for final disposal.

3. The Petitioners filed an Application No. 85 of 2002 for compensation for the death of one Mr. Madhukar Polekar, husband of Petitioner No.1, who was employed as a driver. Application came up before the Labour Court on 18 June 2006 and it was dismissed for default. Thereafter, the Petitioners filed a Misc. Application for restoration of the main application. By order dated 18 February 2008, the Misc. Application was allowed and the matter was restored to file. Thereafter, again the matter was dismissed for default on 23 January 2011 and an application was taken out for restoration, which was dismissed by the impugned order dated 7 February 2011.

4. The learned Counsel for the Petitioners submitted that the Petitioners are residing in a rural area 80 kms. away from Pune and after the death of the husband, the Petitioners, not being aware of the legal intricacies, could not follow the matter diligently. The learned Counsel for the Respondents supported the impugned order.

5. Considering the proceedings from which the application arises viz. Workmen's Compensation Act and that the application is prosecuted by the widow and the children of the deceased and that they are not in receipt of any compensation so far as the matter is not heard on merits, this is a fit case where indulgence need to be shown to the Petitioners. The prejudice

caused to the Respondents can be for stay by imposition of suitable cost. The Court below has not considered these options and has taken hypothetical view of the matter.

6. The learned Counsel for the Petitioner states that the Petitioners will henceforth diligently prosecute the application and will not seek needless adjournment. The Court will be entitled to take the default of the Petitioners as an aggravated default.

7. In the circumstances, the Writ Petition is allowed in terms of prayer clause (b). The Application No.85 of 2002 pending on the file of the Commissioner for Workmen's Compensation, Labour Court, Pune stands restored to file and to be heard on merits, subject to the Petitioners paying cost of Rs.5,000/- to the Respondents, within period of four weeks from today.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Order.