

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.2334/2015
IN
FIRST APPEAL (ST) NO.18075/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Yogita Deshmukh i/b. M. M. Sathaye for the Applicant

CORAM : K. K. TATED, J.
DATE : JULY 15, 2015

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the Applicant, the matter is taken on board for urgent orders.

2. This Application is preferred by the Insurance Co. for stay of the operation and implementation of the impugned award dated 26/02/2014 passed by the 1st Labour Court, Mumbai in Application (WCA) 909/C-323/2008 by which the Trial Court held that the Respondent-Claimant is entitled to Rs.2,21,675/- with 12% p.a. interest by way of compensation.

3. The learned counsel for the Applicant submits that the Tribunal failed to appreciate that the Applicant failed to prove relationship of employer and employee and therefore, Insurance Co. is not liable to pay compensation. She further submits that the Applicant and opposite party are real brothers and there is collusion between them. These facts are not considered by the Trial Court. She further submits that if entire amount is recovered by the Respondent-Claimant, nothing will survive in the present proceedings. She submits that the Insurance Co. has already deposited the entire award amount in the Tribunal. She submits that this Hon'ble Court be pleased to stay the operation and implementation of the impugned award. She submits that if stay is not granted, irreparable loss and injury will be caused to the Applicant.

4. It is to be noted that in the present proceedings, there is delay of more than 394 days in filing the First Appeal. In an accident which occurred on 08/08/2008 the claimant sustained several injuries. On the date of accident, he was 29 years old and was earning Rs.4000/- pm salary. Because of accident, the claimant was treated in OPD of Rajawadi Hospital on 08/08/2008 and

thereafter he was taking treatment. Because of the accident, the claimant is not in a position to continue his occupation as a Driver and suffered 100% earning capacity. Considering these facts and as there is delay of more than 394 days on the part of the Insurance Co. to file the present appeal, I am of the opinion that the claimants are entitled to withdraw 50% of the award amount, without furnishing any security.

5. Hence, following order is passed:

a. The operation and implementation of the impugned award dated 26/02/2014 passed by the 1st Labour Court, Mumbai in Application (WCA) 909/C-323/2008 is stayed till further orders.

b. The Respondent-Claimant is entitled to withdraw 50% of the award amount without furnishing any security subject to outcome of the appeal.

c. The Trial Court is directed to invest the remaining amount in a fixed deposit account of any Nationalized bank, initially for a period of one year which will be renewed from time to time till hearing and final disposal of the appeal.

d. Liberty granted to the Respondent - claimant to file an appropriate Application for withdrawal of the amount, if they so desire, which will be decided on its own merits.

e. Civil Application stands disposed off accordingly.

JUDGE