

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

**CIVIL APPLICATION NO.1230 OF 2014
IN
FIRST APPEAL (ST). NO.26223 OF 2010**

Maharashtra State Road Transport Corporation .. Applicant

Vs.

Vivekanand Audumbar Jathar .. Respondent

Mr.C.M.Lokesh i/b M/s.G.S.Hegde and Associates for the applicant

Mr.Dilip Bodake for the respondent

**CORAM : K.K.TATED, J.
DATED : 26/06/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by original appellant for restoration of Civil Application No.4056 of 2010 which was dismissed in view of conditional order dated 4.8.2011 passed by this court (Coram: A.S.Oka, J.) for want of service on respondent.
- 3 The learned counsel for the applicant submits that they filed the present First Appeal on the basis of cause title disclosed by the respondent in their application for compensation. He submits that when the bailiff tried to serve the respondent at the address given in the order of Trial Court's proceeding, notice returned unserved for want

of correct address. He further submits that thereafter their officers made enquiry and learnt that the respondent claimant started staying At Post Pimpalner, Taluka Madha, District Solapur. Hence, they preferred the present Civil Application for restoration of Civil Application No.4056 of 2010 along with First Appeal (ST). No.26223 of 2010. He submits that in the present proceeding, the Commissioner for Workmen's Compensation and Judge, 3rd Labour Court, Pune by impugned award dated 29.4.2010 awarded sum of Rs.4,90,632.70 with 12% interest by way of compensation which is on higher side. He further submits that applicant already deposited the awarded amount with 12% interest in the Trial Court. He submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in preferring the present Civil Application and restore Civil Application No.4056 of 2010 with First Appeal (ST). No.26223 of 2010. He submits that if the present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

4 On the other hand, the learned counsel appearing for the respondent claimant vehemently opposed the present Civil Application. He submits that applicant has made incorrect statement in the present Civil Application. He submits that applicant had knowledge about the respondent's present address. He submits that the applicant respondent by his letter dated 3.12.2010 called upon the applicant to comply the award passed by Trial Court. In that letter the applicant specifically disclosed his present correct address. In spite of the said disclosure the applicant has not taken appropriate steps in the present matter. He further submits that because of mistake on the part of Advocate for applicant claimant should not be penalised. In support of this contention, he relies on the order dated 25.11.2013 passed by this

court in Civil Application No.953 of 2011 in Second Appeal No.94 of 1998 particularly paragraph 13. On the basis of these submissions and the order dated 25.11.2013 passed by this court (Supra), the learned counsel for the respondent submits that there is no substance in the present Civil Application. Same be dismissed.

5 I have heard both the counsel at length. It is to be noted that in the present proceeding, the respondent disclosed his address before the Trial Court at Pune. Thereafter, he neither informed the applicant nor made any application in the Trial Court that he shifted to District Solapur from Pune. The letter written by the respondent dated 3.12.2010 also does not disclose that the respondent left Pune and started staying at Solapur.

6 The applicant filed the present proceeding on the basis of address disclosed in the cause title of claim application filed in the Trial Court. Hence, I do not find any substance in the submission made by the learned counsel for the respondent to oppose the present Civil Application. The order relied by the respondent dated 25.11.2013 in Civil Application No.953 of 2011 is not applicable in the facts and circumstances of the present case.

7 Considering the submissions made by the learned counsel for the applicant and the averments made in Civil Application, I am satisfied that the applicant has made out a case for allowing Civil Application. Hence, following order:

- a) Civil Application No.4056 of 2010 is restored on file for hearing on its own merits by recalling the order dated

4.8.2011.

b) Office is directed to place Civil Application No.4056 of 2010 on board for hearing on 3.7.2015.

c)) Civil Application is disposed of accordingly.

(K.K.TATED, J.)