

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

62 CIVIL APPLICATION NO. 236 OF 2016
IN FA/58/2013 WITH CA/13063/2016 IN FA/58/2013

AVADHU NARAYAN ROY AND ANR
VERSUS
THE UNION OF INDIA, THR. GM, CENTRAL RAILWAY

...
Advocate for Applicants : Bhokarikar Madhav M
Advocate for Respondents : M.N. Navandar
...

CORAM : P.R. BORA, J.
DATE : 21-11-2016.

P.C. :

1. Civil application no. 236 of 2016, stands dismissed as not pressed by the applicant.

2. Shri Bhokarikar, the learned counsel appearing for the applicants submits that, there was a group of matter arising out of the awards passed by the Railway Claims Tribunal, wherein, the issue involved was regarding the jurisdiction of this court to entertain the appeals on the point of jurisdiction. The learned counsel submits that, since the present appeal was also in the said group, the learned counsel was under a belief that, the same is being continued along with the other appeals. Learned counsel further submits that, however, the present appeal was dismissed for non-payment of bhatta vide order passed by the learned Registrar on 01.02.2013 but the said fact could not be noticed by the counsel since the matter was in the said group.

2. The learned counsel further submits that, the moment it was noticed that appeal has been dismissed for non-payment of bhatta, all necessary steps were taken and the present application is filed.

3. The learned counsel submits that, the delay which has occurred in filing the present application is for bonafide reasons and is unintentional. The learned counsel further submitted that, the petition filed by present applicants seeking compensation has been dismissed by the Railway Claims Tribunal on erroneous grounds and, as such, an opportunity needs to be given to the present appellants to agitate their matter on merits. The learned counsel, therefore, prayed for allowing the present application.

4. Shri. M.A. Navandar, the learned counsel for the respondents i.e. railway administration has opposed for condoning the delay. The learned counsel submits that, the appellants were not diligent in prosecuting their applications and as such the delay is caused because of negligence on their part and the same cannot be condoned for the said reason. Learned counsel, therefore, prayed for dismissal of the application.

5. After having considered the submissions advanced by the learned counsel appearing for the respective parties and more

particularly after having considered the fact that, the issue of jurisdiction to entertain the appeals was pending before this court and the present matter was one of the matter in the said group, there is a reason to believe that necessary steps may not have been taken in the present matter. Moreover, it does not appear that the delay which is caused in filing the application is for malafide reasons or with some ulterior intention. in the circumstances, I am inclined to allow the present application. Hence the following order.

ORDER

- i) The order passed by the learned Registrar on 01.02.2013 is quashed and set aside. Consequently, first appeal no. 58 of 2013 stands restored to its original file.
- ii) Delay occurred in filing the present application is condoned.

6. Issue notice to the respondents. Shri M.N. Navandar, waives for the respondents. Service complete. Place the matter for admission on 19.12.2016. Call for record and proceedings.

(P.R. BORA)
JUDGE