

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

FIRST APPEAL NO.495 OF 2012

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.Poonam Mittal for the appellant

Mr.C.R.Naidu with Mr.Aniket Poojari i/b
M/s.C.R.Naidu and Co. for the respondent no.5

**CORAM : K. K. TATED, J.
DATED : 09/02/2016**

PC.:

. Heard the learned counsel for the appellant and the learned counsel for respondent no.5.

2 By this First Appeal Insurance Company is challenging the judgment dated 8.12.2011 passed by 3rd Labour Court at Mumbai in Application (WCA) No.25 of 2011. Said application was for condonation of delay in filing application to set aside judgment passed in Application (WCA) No.375/B-79 of 2008 dated 5.2.2010.

3 By this judgment, 3rd Labour Court held that the application filed by the Insurance Company for recalling the ex-parte order dated 5.2.2010 was not maintainable.

4 The learned counsel for the Insurance

Company submits that the Trial Court failed to consider the fact that they have filed the application for recalling the order dated 5.2.2010 which was passed ex-parte. She submits that the Trial Court at the time of passing the order dated 8.12.2011 rejected the appellant's application for condonation of delay in filing application for recalling the ex-parte order as well as dismissed their application on merits. She submits that the Trial Court failed to consider the fact that appellant had good chance of success in main matter. She submits that if the said order is not set aside, irreparable loss will be caused to them.

5 On the other hand, the learned counsel for the respondent no.5 vehemently opposed the present First Appeal. He submits that even if it is considered that the appellant Insurance Company has filed the said application for review of the order dated 5.2.2010, same was not maintainable in view of section 6 of the Employees Compensation Act, 1923. He submits that the Commissioner for Workmen's Compensation gets the power of review only as per section 6 of the said Act. He further submits that there is no provision under the said Act to make application for setting aside ex-parte judgment. On the basis of this submission the learned counsel for the respondent no.5 submits that there is no substance in the present First Appeal and same be

dismissed with costs.

6 I have heard the learned counsel at length. It is to be noted that the present First Appeal under said Act can be admitted only on substantial question of law. The 3rd Labour Court, Mumbai specifically held in paragraph 10 of the judgment that the Insurance Company filed application for setting aside the ex-parte decree and not for reviewing the earlier judgment dated 5.2.2010. The Trial Court held that appellant has not made out any case for condonation of delay as well as the application was not maintainable on merits.

7 Considering these facts and the reason given by the Trial Court, I am of the opinion that appellant has not made out any substantial question of law to entertain the present First Appeal. Hence, First Appeal stand dismissed summarily.

(K.K.TATED, J.)