

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2476 OF 2015

IN

FIRST APPEAL (ST.) NO. 30603 OF 2004

(RC No. 130 OF 2013)

Oriental Insurance Co. Ltd.

**...Applicant/
Appellant**

Versus

Smt. Sadhana Devidas Gujarathi & Ors.

...Respondents

Mr. J.S. Chandnani, for the Appellant.

Mr. R.K. Bobade, for Respondent No. 1.

CORAM : R.M. SAVANT, J.

DATE : 28th July 2016

P.C. :

1. The above Civil Application has been filed for restoration of the above First Appeal which has stood dismissed for non prosecution on account of the conditional order dated 10th August 2011 passed by a learned Single Judge of this Court in the above First Appeal. The said conditional order directed the Applicant to

carry out the amendment within three weeks, so also to pay Bhatta within the said period. The said order also directed that a private notice be served on the Respondents. It seems that the Respondent No. 4 remained to be served and also the Bhatta though paid was not within the time, and resultantly, the above First Appeal stood dismissed. Therefore, the Civil Application for condonation of delay stood dismissed for non prosecution and resultantly, the First Appeal also stood dismissed for non prosecution. The Applicant also seeks condonation of delay in filing the Application on the ground that it is only after the Respondents No. 1 and 2 claimants had filed the Civil Application and the same was served upon the Applicant that the Applicant became aware of the fact that the Civil Application for condonation of delay and the First Appeal has stood dismissed for non prosecution.

2. The learned Counsel appearing for the Respondents No. 1 to 3 opposed the Application and states that no sufficient cause has been shown for the delay of about three years in filing of the above Civil Application. In my view, having regard to the fact that the Civil Application has stood dismissed on account of non removal of the office objection is also considering the fact that the knowledge was

acquired by the Applicant after the Civil Application filed by the Respondents No. 1 and 2 was served upon it. In my view, case for restoration of the Civil Application for condonation of delay as well as the First Appeal is made out. The above Civil Application is therefore, allowed. Resultantly, the Civil Application for condonation of delay and the First Appeal are restored to file.

3. On restoration, issue fresh notice to the Respondent No.4, returnable on 25th August 2016. In addition to service of notice through Court, the advocate for the Applicant shall serve a private notice by Registered Post A.D. and/or by Courier service and/or by hand delivery on the Respondents and shall file affidavit of service before the returnable date.

4. The Civil Application for restoration and the Civil Application for stay are accordingly, disposed of.

5. The First Appeal along with the Civil Application for condonation of delay are restored and to come for admission on 11th August 2016 along with the Civil Application for withdrawal.

[R.M. SAVANT, J.]