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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.701 OF 2017

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| 1. Pandurang s/o Balu Rathod
Age – 55 years, Occ – Labour
R/o Salvai Khurd Tanda,
Taluka – Aundha (Nagnath)
District – Hingoli | PETITIONERS |
| 2. Poonam s/o Bhujang Rathod
Age – 4 years, Occ – Nil
R/o as above | |
| 3. Pawan s/o Bhujang Rathod,
Age – 3 years, Occ – Nil
R/o As above | |

(Petitioners No.2 and 3 are minors though
their natural guardian, grandfather petitioner No.1)

VERSUS

Dattrao s/o Namdevrao Rakhunde Age – 62 years, Occ – Agriculture R/o Jawalabazar, Taluka – Aundha (Nagnath) District - Hingoli	RESPONDENT
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Mr. Shivprasad G. Jadhavar, Advocate for the petitioners
Mr. Sudhir K. Chavan, Advocate for the respondent
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 13th JUNE, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Leave to amend prayer clause. Amendment be carried out forthwith.

3. Writ petition has been moved against order dated 6th October, 2016, whereunder Civil Miscellaneous Application No.83 of 2016 seeking condonation of delay for filing application for restoration of first appeal No. 2 of 2014 has been rejected.

4. After hearing learned advocates, it emerges that proceedings pending before Commissioner for Workmen's Compensation were dismissed in default for appearance of present petitioners for cross examination. An application came to be moved for restoration belatedly and for condonation of delay aforesaid Civil Miscellaneous Application No. 83 of 2016 had been moved explaining that petitioner No.1 is an age old person and petitioners No. 2 and 3 are minor children of the deceased workman and that since health condition of petitioner No.1 being not sound, the prosecuting advocate could not be contacted and consulted in the interregnum. It has further been referred to that there was no intention in not being before court for cross examination. It is in the circumstances, delay of eleven months and some odd days has been caused.

5. On the other hand, there had been contention that proceedings are being protracted deliberately after petitioner No. 1 had filed affidavit of examination in chief and had been remaining absent to face cross examination and under the circumstances there had been no alternative but to dismiss the proceedings in default. Medical certificate indicating illness of petitioner No. 1 is not such which would require petitioner No. 1 to be hospitalized or an indoor patient. There is sheer negligence on the part of petitioners in prosecuting the matter.

6. Learned judge, it appears, has considered that medical certificate for the period during 18th March, 2015 to 23rd February, 2016 is in respect of heart disease and hyper tension and except certificate no other document has been placed on record, which according to learned judge shows that on 18th March, 2015 petitioner No. 1 had not been an indoor patient and that the petitioner had been taking follow up treatment. According to learned judge the certificate produced does not show that petitioner No. 1 had been indoor patient and had been unable to move. Learned judge has further considered that it is not the case of the petitioners that they were not aware of the dismissal order as referred to in the decision cited on behalf of the petitioners before the lower court.

7. Learned advocate for the petitioners, on instructions, submits that the petitioners would waive interest for the period from 18th March, 2015 to the date of application i.e. 25th February, 2016 in case their claim is granted by the Commissioner Workmen's Compensation.

8. Having regard to the circumstances that it is workmen's compensation claim made by petitioners about death of son and father and looking at their ages, a pedantic approach in the matter would be required to be eschewed. While the medical certificate refers to heart disease and hyper tension, the interpretation placed on the same appears to be rather technical and cursory. While considering delay condonation applications, guidelines appearing under the judgments of the Supreme Court particularly those in the case of "*Collector, Land Acquisition, Anantnag V/s. Ms. Katiji and others*" reported in *AIR 1987 SC 1353*, and in the case of "*Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 Supreme Court Cases 649" may have to be taken into account. It does not appear to be a case that any particular benefit can be said to have been derived by causing delay in making application for restoration. In the larger interest of justice, it would be expedient to allow the writ

petition.

8. As such, writ petition stands allowed. Impugned order dated 6th October, 2016 passed by Civil Judge, Senior Division, Basmatnagar in Civil Miscellaneous Application No. 83 of 2016 stands set aside. Miscellaneous Civil Application No. 83 of 2016 stands granted. Rule is made absolute in aforesaid terms.

9. The proceedings be prosecuted expeditiously and be disposed of as early as possible.

[SUNIL P. DESHMUKH, J.]

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