

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 12946 OF 2011 IN FA/411/2010

THE NATIONAL INSURANCE CO LTD THR DIVISIONAL MANAGER
VERSUS
MRS VIJAYA ABASAHEB PANSARE AND OTHERS

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Advocate for Applicant : Mr. D. V. Soman
Advocate for Respondents No.1 to 4 : h/f. Mr. P. B. Patil.

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WITH CA/6112/2005 IN FA/411/2010
WITH CA/12947/2011 IN FA/411/2010
WITH CA/14391/2017 IN FA/411/2010

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CORAM : K.K. SONAWANE, J.

DATED : 21ST NOVEMBER, 2017.

Order :-

Heard learned counsel for applicant – National Insurance Company Limited as well learned counsel for respondents No. 1 to 4 (original claimants). When matter is called out, respondents No. 5 to 8 did not turn up to this Court. Perused the applications.

2. This is an application for condonation of delay to file civil application for setting aside the Order passed by this Court in regard to the dismissal of appeal against respondent No.9 (i.e. owner of the offending vehicle) for not taking suitable steps in respect of service of notice to respondent No.9.

3. Learned counsel for applicant contends that despite efforts, the correct forwarding address of respondent No.9 was not available, therefore, no steps were taken against respondent No.9. Meanwhile, this Court dismiss the appeal against respondent No.9. He submits that, respondent No.9 is the owner of offending vehicle and necessary party in this appeal for adjudication of the matter in issue on merit. In case, opportunity is not granted to applicant, it would create hurdle and caused prejudice to appellant- Insurance Company as well as original claimants also in case of success of appeal on merit.

4. In view of aforesaid submission and in the nature of subject matter, I find force in the contention put-forth on behalf of learned counsel for applicant. Therefore, there is no impediment to allow the civil application. Accordingly, civil application stands allowed in terms of prayer clause 'B'. The delay for filing civil application to serve the notice to respondent No.9 through paper publication is hereby condoned. The order of dismissal of first appeal dated 15-04-2010 stands set aside and quashed.

5. The Registrar to proceed further for registration of civil application for relief to serve the notice to respondent No. 9 through paper publication. On registration of civil application, same stands allowed. The applicant/appellant is hereby permitted to serve the notice to respondent No.9 through paper publication as prayed, returnable on 21st December, 2017. Accordingly, another civil application stands allowed in terms of prayer clause 'B'. The Registry to take requisite steps for further process.

6. Accordingly, civil applications stand disposed of in above terms.

[K. K. SONAWANE]
JUDGE

rrd.