

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

WRIT PETITION NO. 9817 OF 2014

Narayan Murlidhar Theng and Others ..PETITIONERS

VERSUS

Dinkar S. Shinge and Another ..RESPONDENTS

WITH

WRIT PETITION NO. 9818 OF 2014

Sonyabapu Tulsiram Wakade and Another ..PETITIONERS

VERSUS

Dinkar S. Shinge and Another ..RESPONDENTS

WITH

WRIT PETITION NO. 9819 OF 2014

Narayan Murlidhar Theng ..PETITIONER

VERSUS

Dinkar S. Shinge and Another ..RESPONDENTS

....

Mr. M.M. Joshi, Advocate with Mr. K.A. Jahagirdar, Advocate for petitioners.
Mr. H.A. Patankar, Advocate for Respondent No.2.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th JULY, 2017**

ORDER :

1. In all these matters, the petitioners are aggrieved by the order dated 28th August, 2014 by which the Trial Court has rejected the application praying for enlargement of time to pay the costs.

2. The Respondent No.1 in all these matters has been served by paper publication. Service is therefore complete in the light of the publication of the notice in marathi Daily Sakal, Pune edition on 01st May, 2017. Yet he has not appeared.

3. I have heard the submissions of the learned Counsel for the petitioners and the Respondent No.2 – insurance company.

4. The petitioners are the original claimants in the claim application bearing M.A.C. Application Nos. 615 of 2006, 614 of 2006 and 612 of 2006 respectively. All these petitions were dismissed in default by order dated 10th December, 2010.

5. Application bearing M.A.R.J.I. Nos. 14, 12 and 13 of 2012 respectively were allowed by order dated 07th August, 2014. Delay in filing the restoration application was condoned on the condition of depositing cost of Rs.300/- within ten days from the date of the order. The impugned order dated 28th August, 2014 reads as under:-

“Heard. In original order specific directions issued those not followed. Application rejected”

6. These petitioners, on account of the illness of their advocate, could not deposit the cost within ten days and the period expired on 17th August, 2014. These petitioners moved an application on 19th August, 2014 which was on the 12th day from the date of the order dated 07th August, 2014, seeking leave of the Court to permit them to deposit the cost of Rs.300/-. By the impugned orders, the said applications have been rejected.

7. Section 148 of the Code of Civil Procedure reads as under:

“Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

8. After considering the submissions of the learned Counsel for the respective sides and keeping in view the law as is crystalised by the Hon'ble Supreme Court in the matters of *Yeshoda Vs. K. Nagarajan 1996 (11) SCC 228* and *D.V. Paul Vs. Manisha Lalwani AIR 2010 SC 3356* and by this Court in the matter of *Smt. Vatsala Shankar Bansole Vs. Sambhaji Nanasaheb Khandare and Another 2002 (4) ALL M.R. 374*, I find that the Trial Court has adopted a pedantic approach rather than taking a pragmatic view. The applications for seeking enlargement of time were filed on the 12th day.

Technically, the delay was of only one day. I find it too harsh on the part of the Trial Court in passing such order as the claimants had to litigate upto this Court and spend almost three years with pending claims for compensation only due to the insensitivity shown by the Court below. I am therefore recording my displeasure about the view taken by the Trial Court in passing the said order.

9. Considering the effect of Section 148 and the law laid down by the Hon'ble Apex Court, the impugned order which is in a single sentence dated 20th August, 2014 in all these matters is quashed and set aside. Applications bearing M.A.R.J.I. Nos.14, 12 and 13 of 2012 are allowed. The petitioners shall deposit an amount of Rs.300/- in each of these matters on or before 05th August, 2017. All the petitions are allowed accordingly.

10. Learned Registrar (Judicial) of this court is directed to circulate a copy of this order to all the learned Judges of the District Judiciary.

(RAVINDRA V GHUGE, J.)

SSD