

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

929 CIVIL APPLICATION NO. 13903 OF 2016 IN RC/1374/2010

Shri. Girish Khimji Mishri .. Applicant
(Original Claimant in WC-126/05)

VERSUS

1. Managing Director,
Cadbury India Ltd.
2. The Manager,
Royal Sundaram Insurance Co.Ltd. .. Respondents.

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Advocate for Applicant : Mr. Kailas A Kadam, Mr.Tukaram M.Venjane.
Adv.for Resp.No.2 : Mr.Siddharth S. Wagh h/f. Mr A. S. Deshpande.

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CORAM : K.K. SONAWANE, J.

DATED : 13TH SEPTEMBER, 2017.

Order :-

Heard learned counsel for applicant and learned counsel for respondent No.2/appellant- Insurance Company. Despite service of notice, none appears for the respondent No.1 Cadbury India Limited, Mumbai.

2. Perused the relevant documents of the proceedings. It appears that, the respondent No.2/appellant- Insurance Company has filed the appeal against the impugned Judgment and Order of the learned Commissioner dated 06th February, 2010, in W.C.A.No. 126 of 2005. This appeal came to be filed in the year 2010, accompanied with the application for condonation of delay of 30 days caused in preferring First Appeal against impugned Judgment and Order. The respondent No.2 caused his appearance in the proceedings. Despite service of notice, no one else appeared for respondent No.1 Cadbury India Limited. But, there is no progress in the proceedings, which is kept pending since year 2010 for hearing of application for condonation of

delay. Admittedly, the applicant (original claimant) has to get compensation amount as awarded by the learned Commissioner in this case. Moreover, the interim relief in the form of stay in the impugned Judgment and Order was passed by this Court, on 13th July, 2010. But, as the appellant failed to remove the office objection, the matter was dismissed in default. However, once again the appeal came to be restored to its original stage by this Court under Order dated 22nd October, 2010. Even thereafter, there is no progress in the proceedings. The amount of compensation deposited under appeal is lying in the concerned Court without any further progress into the appeal.

3. In view of attending circumstances, I do not find any impediment to allow the applicant to withdraw the entire amount deposited by the appellant- Insurance Company in this case. Mr. A.S. Deshpande, the learned counsel appearing for appellant-respondent No.2, submits that, only 50 % of the compensation amount be allowed to withdraw by the applicant-original claimant and rest 50 % amount of compensation be kept in Fixed Deposit Receipt Account. In view of lackadaisical and lethargic conduct and demeanor of the appellant, I am not in agreement to allow the applicant for withdrawal of 50 % amount deposited in this Court. It can not be brushed aside that, since year 2005, after the alleged accident occurred, the applicant is pursuing the matter for getting compensation under the Workmen's Compensation Act, 1923. But, due to lethargic approach on the part of appellant, the applicant-original claimant was deprived from enjoying the fruits of the Order passed by the learned Commissioner. In such circumstances, I do not find any impediment to allow the applicant to withdraw the entire amount deposited in this Court by appellant- Insurance Company, subject to condition that the applicant-original claimant shall furnish

undertaking to the effect that, in case any adverse situation arises after adjudication of appeal on merit, the applicant-original claimant will refund the amount received within stipulated period as directed by this Court. On furnishing the undertaking by the applicant-original claimant referred supra, the Registrar (Judicial) of this Court to issue letter to concerned Executing Court in which the amount is deposited to disburse the amount accordingly. In such circumstances, the application for withdrawal of amount stands allowed in terms of prayer clause 'D'. Registry to take requisite steps for disbursement of the amount deposited by the respondent in favour of applicant as per rule. Accordingly, Civil Application in above terms stands disposed of.

[K. K. SONAWANE]
JUDGE

rrd.