

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION (ST) NO. 7275 OF 2017
IN
CIVIL APPLICATION NO. 2734 OF 2013
IN
FIRST APPEAL (ST) NO. 20732 OF 2013

National Insurance Co. Ltd. .. Applicant
vs.
Smt. Sulochana K. Gurjar and ors. .. Respondents

Mr. Atul B. Gatne for the Applicant.
Mr. T.J. Mendon for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.
DATE : 14 MARCH 2017.

P.C. :-

1] By this civil application, the applicant seeks restoration of Civil Application No. 2734 of 2013 in First Appeal (St.) No. 20732 of 2013 as against respondent Nos.4 and 5. The civil application and consequently, the appeal stood dismissed as against respondent Nos.4 and 5, by orders dated 17 November 2015 and 22 September 2016.

2] In the civil application, at paragraph 17(b), it is stated that there is delay of 140 days in filing the civil application. However, the delay is actually, more than one year and not merely 140 days as against respondent No.4. There is absolutely no explanation in the civil application in order to explain this delay.

3] By order dated 14 March 2017 in Civil Application No. 715 of 2017, the explanation similar to one contained in the present civil application has already been rejected. In the said case, the delay

insofar as service upon respondent No.2 is concerned, which is the same party, impleaded as respondent No.4 in this civil application, was of over 769 days and such explanation was not found to be satisfactory. The matter had appeared on the board on several occasions, since November 2015 and therefore, it cannot be said that the applicant/appellant was unaware of either order dated 17 November 2015 or its consequences. Since, the present civil application seeks to explain delay of 140 days, when in fact, the actual delay is of more than one year, it is apparent that there is no sufficient cause shown. Accordingly, the civil application is liable to be dismissed as against respondent No.4.

4] Insofar as respondent No.5 is concerned, the delay, as it appears, is of 140 days. The explanation is really not satisfactory, as the matter was appearing on the board and nothing prevented the appellant/applicant from taking proper steps. However, even if, the matter is required to be viewed with some liberality insofar as respondent No.5 is concerned, no useful purpose will be served, since the appeal itself, cannot proceed in the absence of respondent No.4. In this regard, the order has been made on 14 March 2017 whilst disposing of the connected Civil Application No. 715 of 2017 in First Appeal (St.) No. 20650 of 2013. The same reasoning will apply, in this matter as well. Accordingly, this civil application and consequently the appeal itself, is dismissed as against respondent Nos.4 and 5.

5] Mr. Gatne, however, submits that in the present case, the applicant/appellant, questions the quantum of compensation

awarded and in respect of such an issue, respondent Nos.4 and 5 are not necessary parties. He submits that even if the civil application/appeal is to stand dismissed as against respondent Nos.4 and 5, the issue of quantum can always be gone into. There appears to be *prima facie* merit in this contention. Therefore, it will not be appropriate to dismiss the appeal in its entirety.

6] Accordingly, this civil application is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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