

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 715 OF 2017
IN
CIVIL APPLICATION NO. 2747 OF 2013
IN
FIRST APPEAL (ST) NO. 20650 OF 2013

National Insurance Co. Ltd. .. Applicant
vs.
Smt. Bhagyashri S. Gurjar and ors. .. Respondents

Mr. Atul B. Gatne for the Applicant.
Mr. T.J. Mendon for Respondent No.1.

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

P.C. :-

1] This civil application seeks recall of the order dated 23 December 2014, by which, Civil Application No. 2747 of 2013 and consequently, the first appeal itself stands dismissed as against respondent No.2 for failure to take steps to serve respondent No.2.

2] In terms of the order dated 23 December 2014, four weeks time was granted to take steps, failing which, it was made clear that the application shall stand dismissed as against respondent No.2 without reference to the court. This four weeks period had expired on 22 January 2015.

3] The present civil application has been taken out only on 9 March 2017 seeking condonation of delay of 789 days and restoration of appeal. In the civil application, there is virtually no explanation as to why from 22 January 2015 till 9 March 2017, no steps were taken to seek restoration. At the highest, it can be said

that there is some explanation from January 2017 to March 2017, which is hardly relevant in the facts and circumstances of the present case. There is no explanation as to why no steps were taken from January 2015 to January 2017.

4] Although, the matter stood dismissed as against respondent No.2, the matter appeared on several occasions on the board, since service was completed upon other respondents. The matter was attended by the applicant/appellant. This means that the applicant/appellant was very much aware of the order dated 23 December 2014 and the consequences of non-compliance thereof. Despite this, no steps were taken for restoration. The matter was pending for over two years, which is evident since the delay in the case is 789 days.

5] The applicant/appellant had derived full advantage of its own negligence. This is because the appellant/applicant obtained the ad-interim relief restraining the execution of the impugned award. After obtaining such ad-interim order, the least that was expected from the applicant/appellant was that it take steps to see that the matter proceeds. In such circumstances and in absence of any explanation, much less, sufficient cause, the inordinate delay of 789 days cannot be condoned.

6] The civil application is accordingly dismissed.

(M. S. SONAK, J.)