IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2727 OF 2002
IN
FIRST APPEAL (STAMP) NO. 13065 OF 2002
WITH
CIVIL APPLICATION NO. 2726 OF 2002
IN
FIRST APPEAL (STAMP) NO. 13065 OF 2002

The Oriental Insurance Co. Ltd. .. Appellant
vs.
Shri Shesaji A. Wavdara & Ors. .. Respondents

Mr. J. S. Chandnani for Appellant.

CORAM : M. S. SONAK, J.
DATE: 10 JANUARY 2017

P.C :

1] The appellant, obtaining the following ad interim order on 6 August 2002 :

> *"Not on board.*
> *Heard learned counsel for the appellant.*
> *Stay granted stand extended till admission. Appellant to deposit the remaining decretal amount within 4 weeks.*
> *Fix the appeal for admission after 4 weeks."*

2] Today, learned counsel for the appellant is unable to say whether or not the decretal amount was at all deposited. The record indicates that no such deposit has been made. This means that the appellant obtained an ad interim order on 6 August 2002, and has perhaps enjoyed the benefit of this order for all these years, without complying with the condition subject to which the said order was made.

3] Thereafter, the record indicates that hardly any steps have been taken for effecting service upon the respondents. In the year 2005 there is an endorsement that notice to the respondent no. 1 is returned unserved with the Bailiff's remark 'dead'. There is no proper service on respondent no. 3 as well. The order was made in presence of an Advocate for the appellant, since, the presence of such Advocate is recorded in the Roznama.

3] Thereafter, in the year 2007, adjournment was applied for. On 23 February 2007 fresh notice was ordered. The endorsement in the file however indicates that Bhatta was not paid, and hence no notices could be issued. There is no affidavit of service filed. From the aforesaid, it is quite clear that the appellant has taken no steps of effecting service upon the respondents, possibly because the appellant was enjoying the benefit of the ad interim order dated 6 August 2002.

4] In the year 2017, when the matter has come up, again, there are no steps taken with regard to brining on record any legal representatives of the respondent no. 1 or with regard to service upon the respondent no. 3. When questioned about the deposit, no proper answer was forthcoming except to say that necessary intimation was given to the Insurance Company and it is not known as to whether the Insurance Company has deposited the amount or not.

5] This is a matter relating to compensation arising out of motor accidents. Greater amount of sensitivity, leave alone, diligence was expected from the Insurance Company, which is the appellant in this matter. However, the Insurance Company, has enjoyed the benefit of ad interim relief without even bothering to deposit the decretal amount within four weeks from the date of the order dated 6 August 2002.

6] In the aforesaid circumstances, the civil application and consequently appeal is dismissed for non prosecution. The appellant is directed to pay costs which are computed at Rs.25,000/- (Rupees Twenty Five Thousand) to the respondents within a period of four weeks from today.

7] Mr. Chandnani, learned counsel appearing for the appellant points out that by letter dated 17 August 2002 addressed to Mr., A. Bardhan, Assistant Manager, Oriental Insurance Company Ltd. at Pune, he had intimated the Insurance Company with regard to the order dated 6 August 2002 and had also requested him to comply with the same. Mr. Chandnani points out that there are courier receipts which indicate that such letter was also received by the

Assistant Manager, Mr. A. Bardhan. If this is so, then this is a serious matter and the Oriental Insurance Company Limited should order an inquiry into the circumstances in which Mr. A. Bardhan has not complied with the order dated 6 August 2002. Further, the Insurance Company must also consider whether the amount of costs now imposed should be personally recovered from either Mr. A. Bardhan or from any other Officer who was responsible for complying with the order made by this Court. This is necessary because the Insurance Company, has deprived the claimants of compensation for all these years. Further, if any officers are responsible, the burden, need not always be borne by the Insurance Company, but the Insurance Company should be in a position to recover such compensation from the concerned officer. The Regional Manager of the Oriental Insurance Company Limited is directed to look into the matter and order necessary inquiries.

8] The Registry is directed to send a copy of this order to the Regional Manager, Oriental Insurance Company having its Registered office at Mayfair Tower, 1st floor, Pune-Mumbai Road, Wakdewadi, Pune 411005, within a period of two weeks from today.

9] Civil applications and appeal are disposed of accordingly.

(M. S. SONAK, J.)

Chandka