

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3740 OF 2006
AND
CIVIL APPLICATION NO. 3741 OF 2006
IN
FIRST APPEAL (ST) NO. 15455 OF 2006

Maharashtra State Road Transport
Corporation

.. Applicant /Appellant

vs.

Shrikant L. Adkar and Ors.

.. Respondents

Mr. P. B. Kadam i/b M/s. G.S. Hegde & Associates for the
Applicant/Appellant.

None for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 14 MARCH 2017.

P.C. :-

1] On 4 January 2017, this Court made the following order:

"1] The record indicates that civil application seeking condonation of delay in institution of the appeal has been dismissed as against respondent No.1 vide Registrar's order dated 13 June 2014.

2] Learned counsel for the applicant, however, points out that respondent No.1 was served some time in the year 2006 and even is represented by an advocate in this proceedings. Even today, Mr. Mishra, who holds for Mr. N.V. Vechalkar appears in this matter.

3] In view of the aforesaid, the order dated 13 June 2014 is hereby set aside. The civil application is accordingly restored as against respondent No.1.

4] The civil application, however, stands dismissed as against respondent No.2 by Registrar's order dated 23 October 2013 since despite opportunities, the applicant has

failed to take steps to effect service upon respondent No.2 as also since past three years, no steps have been taken even to seek recall of the order dated 23 October 2013.

5] The challenge in the appeal is to the award which requires the appellant to pay an amount of Rs.1.25 lakhs along with interest thereon to respondent No.1 (original claimant).

6] The award was made in the year 2005. Therefore, the amount alongwith interest would come to a figure, which is substantially higher than Rs.1.25 lakhs. For no fault attributable to respondent No.1, the civil application and consequently the appeal has remained pending.

7] Learned counsel for the applicant seeks some time to apply for recall of the order dated 23 October 2013, by which, civil application has been dismissed against respondent No.2. He also states that in order to show bonafides, the applicant will deposit the amount payable by the applicant in terms of the impugned award before the concerned MACT, within a period of four weeks from today. On basis of this statement, which is accepted, the matter is adjourned by six weeks. Within a period of four weeks from today, the applicant to deposit the entire amount before the MACT. Such deposit shall obviously be without prejudice to the contentions raised in the present appeal.

8] Stand over to 15 February 2017."

2] Today, adjournment is applied for on the ground that Mr. Hegde is not available. Learned counsel who applies for adjournment did not even point out that the applicant had undertaken to deposit the awarded amount before the MACT within a period of four weeks. Upon a query as to whether this amount has been deposited, no proper answer is forthcoming.

3] Taking into consideration what is set out in the order dated 4 January 2017, it was expected that the applicant not only applies for

recall of the order dated 23 October 2013 but also, in order to show *bona fides*, makes deposit within a period of four weeks. Neither has any application been made for recall nor does it appear that any deposit has been made within the prescribed period. On the contrary, adjournment was applied for, perhaps in the fond hope that the attention of this court will not be drawn to the previous order dated 4 January 2017.

4] Taking into consideration such conduct on the part of the appellant, and the fact that the appeal already stands dismissed as against the respondent no. 2, the entire appeal is dismissed for non prosecution. Interim order, if any, stands vacated.

5] In view of dismissal of appeal, civil applications do not survive and are disposed of accordingly.

(M. S. SONAK, J.)

Chandka