

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 4036 OF 2014
AND
CIVIL APPLICATION NO. 3268 OF 2015
IN
FIRST APPEAL NO. 320 OF 2001

The Chief Executive Officer and anr. .. Applicants/ Appellants
vs.
Shantadevi Balaso alias
Krishna Kolekar and ors .. Respondents

Ms Shiya Jadhav i/b S.B. Shetye for the Applicants.
Mr. J.J. Bardeskar for Respondent Nos.1 to 4.
Mr. A.M. Adagule for Respondent No.8.

CORAM : M. S. SONAK, J.
DATE : 20 JANUARY 2017.

P.C. :-

1] By this civil application, the applicants seek condonation of delay and recall of the order dated 25 August 2010, which, according to the applicants, is the order by which the first appeal was dismissed for non-clearance of office objection.

2] If the records are perused, it is clear that the appeal was admitted on 6 June 2001. The applicants also obtained ad-interim relief restraining execution of the impugned award subject to deposit of 50% of the awarded amount. It is submitted that this condition has been complied with. However, the record indicates that for a period of three years from the date of admission of the appeal and the obtaining of ad-interim order, the applicants neither took proper steps to effect service upon the respondents nor did they clear the office objections. Ultimately, on 16 October 2004, this court granted

the applicants four weeks time to clear the office objections, failing which, it was recorded that the matter will stand dismissed without reference to the court.

3] The record indicates that within a period of four weeks from the date of making of the order dated 16 October 2004, once again, the office objections were not cleared by the applicants as a result of which, the appeal stood dismissed on or about 16 November 2004. There is an endorsement made in the record on 28 February 2005 by the Registry that the appeal stands dismissed in view of the court's order dated 16 October 2004 and therefore, all papers may be sent to the decree department for taking further action.

4] This application completely ignores this court's order dated 16 October 2004, in terms of which, the appeal has been dismissed way-back on 16 November 2004. Instead, the applicants, on the basis of an entry on the website proceeds to state that the date of dismissal of this appeal is 25 August 2010. The applicants, cannot take advantage of the obvious error. It was the duty of the applicants to verify the records, from which, it would be evident that this appeal stood dismissed on 16 November 2004 and not on 25 August 2010.

5] Even if, it is assumed that the date of dismissal of the appeal is on 25 August 2010, the application for restoration has been filed only on 30 September 2014, i.e., after a period of almost four years. The explanation is far from convincing. It is only stated that the applicants believed that since the appeal was admitted and ad-

interim relief granted, the matter would appear on board for final hearing. This explanation is too simplistic to deserve any acceptance. Besides, it must be noted that one of the office objection in this case was non-service upon the respondents, who are the claimants before the Motor Accident Claims Tribunal (MACT). The record indicates that the applicants obtained the ad-interim reliefs, but did not bother to effect service upon the respondents, thereby depriving the respondents opportunity of opposing the ad-interim relief for all this while. The respondents were naturally prevented from seeking execution of the impugned award.

6] The record indicates that some of the respondents have already expired. No doubt, an application is taken out alongwith the present application seeking leave to bring their heirs on record. Again, since, the reasons in this application are itself not convincing, there arises no occasion to consider the application for bringing on record the legal representatives.

7] Since, no sufficient cause is made out to condone the inordinate delay of almost 10 years or in any case, delay of almost 4 years, this civil application is dismissed. Civil Application No. 3268 of 2015 does not survive and the same is also dismissed.

(M. S. SONAK, J.)