

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.638 OF 2007  
IN  
FIRST APPEAL (ST) NO.30572 OF 2006  
WITH  
CIVIL APPLICATION NO.639 OF 2007  
IN  
FIRST APPEAL (ST) NO.30572 OF 2006**

The New India Assurance Co. Ltd. ..Applicant/Appellant  
V/s.

1.Shri.Rajkumar Gulabsingh  
Thakur & Ors. ..Respondents

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Ms.S.S. Dwivedi for the Applicant/Appellant.

Mr.Y.M. Pendse for Respondent No.1.

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**CORAM : M. S. SONAK, J.**

**DATE : 24 JANUARY 2017.**

**P.C.**

1. On 15 September 2008 this Court made the following order.

*“ The present application is pending hearing on account of the fact that service on respondent no.3 as not been effected. The applicant has filed the application no.4032 of 2008 which was allowed by this Court and the applicant was directed to issue notice in daily newspaper “Free Press Journal” having circulation in Mumbai insofar as respondent no.3 is*

*concerned. Returnable date of the notice to be issued to respondent no.3 was 15<sup>th</sup> September 2008 i.e. today.*

*2. Learned counsel appearing for applicants states that on account of unforeseen circumstances, the notice from the office could not be collected. The learned Counsel for the applicant, therefore, seeks a fresh returnable date. The returnable date insofar as notice to respondent No.3 is concerned, is, therefore, extended to 17<sup>th</sup> November 2008.*

*3. Rest of the conditions imposed by the order dated 4<sup>th</sup> August 2008 in Civil Application No.4032 of 2008 remain and have to be complied with by the applicants. Applicants to pay costs quantified at Rs.1000/- to be paid to Maharashtra State Legal Services Authority within four weeks. Application disposed of accordingly.*

2. As of today there is no record of service upon respondent no.3 by publication in Free Press Journal. Neither is any copy of the Newspaper produced nor any affidavit of service is filed.

3. Since, this appeal relates to the year 2006, no further indulgence can be granted. Since, the respondent no.3, who is the owner of the vehicle has not been served till date, it is not possible to grant any further indulgence to the applicant.

In the absence of the owner, the appellant is obviously not in a position to argue that there was no Insurance Policy at all and therefore the appellant Insurance Company was not at all liable in the matter.

4. Therefore, for non-prosecution, the Civil Application is dismissed. Consequently, the appeal itself stands dismissed. Interim stay, if any stands vacated.

**(M. S. SONAK, J.)**