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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO.2596 OF 2016 IN
REJECTED CASE NO.1062 OF 2015 IN
CIVIL APPLICATION NO.8283 OF 2014 WITH
REVIEW APPLICATION ST. NO.8513 OF 2014 IN
FIRST APPEAL NO.177 OF 1997

Vishnu s/o Dattatraya Parde ... APPLICANT

VERSUS

Popat s/o Narayan Gapat & others ... RESPONDENTS

.....
Shri M.P. Kale, Advocate for applicant
Shri V.H. Pathade, Advocate holding for
Shri V.S. Undre, Advocate for respondent No.1
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CORAM: A.M. DHAVALÉ, J.

DATED : 26th July, 2018.

ORAL ORDER :

1. By judgment dated 27.1.2014, brother Judge allowed the First Appeal No.177/1997 under Workmen's Compensation Act and directed the applicant herein to pay the compensation of Rs.61,155/- along with interest @ 6% p.a. The worker had met with an accident on 25.3.1993 and suffered amputation in the crushing machine. The defence was that the accident took place

due to his intoxicated condition. The learned Advocate for the respondent was absent. Brother Judge considered the defence of intoxication and negated it and allowed the appeal.

2. The aggrieved employer preferred Review Petition on 27.3.2014 and the same came to be dismissed in default on 10.8.2015.

3. The present Civil Application was filed for restoration of the Review Petition. It is filed on 12.2.2016. In the petition, it has been claimed that, on 14.7.2015, the Review Petition was adjourned to 12.8.2015, but it was mistakenly taken up on the Board on 3.8.2015 and 10.8.2015. It came to be dismissed in absence of the Advocate on 10.8.2015. There was no fault on the part of the Advocate as the matter was not adjourned to 3.8.2015 and 10.8.2015. The present Review Petition has been filed after a delay of 166 days, on 12.2.2016.

4. Heard learned Advocate Shri M.P. Kale for the applicant and learned Advocate Shri B.H. Pathade, holding for learned Advocate Shri V.S. Undre for respondent No.1. After hearing learned Advocate Shri Kale, I find that, there is no satisfactory explanation given for delay of 166 days in filing the application for restoration. Though there is no satisfactory

explanation for the delay in filing the application for restoration, the roznama in Review Petition shows that, on 14.7.2015 the matter was adjourned to 12.8.2015, but it was wrongly taken up on 3.8.2015 and 10.8.2015 and it came to be dismissed in default on 10.8.2015. Since it is a mistake on the part of the Court in dismissing the matter when it was not fixed on Board, the delay is condoned and the restoration application is allowed. Review Petition is taken up on Board. Mr. Pathade, learned Advocate waives service for respondent No.1. The review petition is taken up for hearing by consent.

5. Learned Advocate Shri Kale submits that, in the First Appeal, there was no consideration of the evidence of Dr. Garad that the appellant has sustained injuries due to intoxication. His second submission is that, the rate of interest has been granted from the date of application 7.10.1993 which is also not correct.

6. The scope for review is limited, when the Court has committed apparent mistake which is on the face of record or when the Court was under misconception of facts or has ignored some material relating to the subject matter, then the review jurisdiction can be invoked. In the present case, my learned brother has discussed in para 5 the evidence of Dr. Sunita Garad regarding intoxication and the same is not accepted for the

reasons recorded therein. If the respondent is not satisfied with the said reason, the remedy lies by way of appeal or any other proceedings to the superior Court. It is not permissible in review jurisdiction to re-appreciate the facts and come to a finding, finding different from the one taken by the Judge deciding the appeal. As far as interest is concerned, the law itself is settled that the interest is payable from the date of application.

7. Considering the facts, the review jurisdiction cannot be invoked in this matter. Therefore, the Review Petition deserves to be dismissed. Hence, the Review Petition is dismissed.

8. Civil Application also stands disposed of.

(A.M. DHAVALA)
JUDGE

fmp/