

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

APPEAL AGAINST ORDER NO.53/2018

AND

CIVIL APPLICATION (CAA) NO.81/2018

Rajendra Shamsundar Jaiswal

..VS..

Smt. Sapna Vinod Jadhav and anr

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

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Shri S.S. Deshpande, Counsel for the Appellant.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 25, 2018.

1. Heard learned counsel Shri S.R. Deshpande for the appellant.

2. The present appeal against order is directed against order dated 21.8.2018 passed by learned Ad hoc District Judge-1, Pusad, District Yavatmal in MJC No.3/2016 whereby learned Judge below rejected application for condonation of delay in moving application for setting aside *ex parte* judgment and order.

3. Learned counsel Shri S.S. Deshpande for the appellant submits that respondent No.1-Smt. Sapna is widow of one Vinod Jadhav who lost his life in a

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vehicular accident. The offending vehicle is owned by the appellant. He submits that Motor Accident Claim Petition No.64/2010 was filed by respondent No.1/Smt. Sapna against the present appellant and the Oriental Insurance Company, Branch at Nagpur, through its Divisional Manager, Amravati. He submits that though summons of the said was served on the appellant, the appellant believed word of his Advocate that he will be called as and when he is required. He submits that ultimately learned Member, Motor Accident Claims Tribunal, Pusaad passed order on 20.7.2015 in Motor Accident Claim Petition No.64/2010 in which the Tribunal directed the present appellant to pay amount of Rs.16,93,080/-. He submits that the claim of respondent No.1-Smt. Sapna against the Oriental Insurance Company was dismissed. He submits that, thereafter, the application for setting aside the judgment was filed. However, the said was barred by limitation. Therefore, an application for condonation of delay was filed which was rejected.

4. Learned counsel Shri S.S. Deshpande for the appellant has placed on record copy of the Award passed by learned Member, Motor Accident Claims Tribunal, Pusaad. Perusal of the said it shows that inspite of the summons at no point of time the appellant appeared before the Court. It does not lie in the mouth

of the appellant that he believed word of his Advocate.

5. It is stated by learned counsel Shri S.S. Deshpande for the appellant that the appellant has already filed an appeal challenging the *ex parte* Award passed by learned Member, Motor Accident Claims Tribunal, Pusad. However, since the said appeal was barred by limitation, the said appeal was on stamp vide Stamp No.20416/2018. He submits that an application i.e. Civil Application No.2714/2018 for condonation of delay was filed in the said first appeal along with Civil Application No.2716/2018 for Stay. He submits that on 11.9.2018, this Court issued Notices on the application for condonation of delay. However, insofar as the application for Stay is concerned, it is observed by this Court that the said application will be considered only after deposit of entire decretal amount before this Court within a period of 4 weeks from the said date. However, the amount is not deposited.

6. Thus, it appears that this is an another attempt on the part of the appellant to obtain the Stay.

7. Civil Application No.81/2018 in the present appeal against order is for grant of the Stay. Perusal of the said application shows that the appellant is praying for staying the effect and operation of judgment and award dated 20.7.2015 passed by learned Member, Motor Accident Claims Tribunal, Pusad in Motor

Accident Claim Petition No.64/2010 which in fact was already sought to be stayed in Civil Application No.2716/2018 and as observed above this Court has already observed that the said application will be considered only after depositing the entire decretal amount. Thus, for the very same relief i.e. Stay, the appellant cannot be permitted to file two different applications in two different proceedings.

8. After hearing learned counsel Shri S.S. Deshpande for the appellant, Issue Notices to the respondents, returnable after 4 weeks.

9. Since the Award passed against the appellant is in the nature of money decree, no blanket stay can be prayed. Further, the appellant could not make out an exceptional case for the blanket Stay. Therefore, I pass following order:

ORDER

(i) The appellant is directed to deposit entire amount of compensation under the Award before this Court within a period of 4 weeks from today, failing which the present appeal against order along the application for grant of Stay will be dismissed automatically without back reference to the Court.

(ii) It is made clear that if execution is filed, the Executing Court should not treat mere pendency of the

appeal as Stay and shall proceed with the execution in accordance with law.

JUDGE

!! BRW !!