

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CIVIL APPLICATION NO.12596 OF 2019
IN FA/1029/2006

THE NEW INDIA ASSURANCE CO. LTD
VERSUS
SARJERAO WAMANRAO SALVE AND ANR

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Mr.S.G. Chapalgaonkar, Advocate for applicant
Mr.P.N. Kalani, Advocate for respondent nos.1
and 2.

...

CORAM: V.L. ACHLIYA, J.
DATE : 18.10.2019

ORAL ORDER:

. The applicant has moved this application seeking recall of the order dated 14th July, 2008 on account of non-submission of paper book with delay in filing the application.

2. Heard learned counsel for the applicant and respondents.

3. Mr.Chapalgaonkar, learned counsel for appellant/applicant submits that due to inadvertence the paper book remained to be supplied in terms of the order. It resulted into dismissal of appeal. It is submitted that appeal was admitted in the year 2008,

since thereafter the appellant has lost the track and the order passed in the matter could not be noticed. Due to this reason, the application could not be filed immediately after dismissal of the appeal. Only after the application seeking withdrawal of amount moved by the respondents- claimants, the applicant/appellant came to know about the dismissal of appeal. Immediately thereafter the application is filed.

4. Learned counsel for the respondents strongly opposed the application with contention that the reasons assigned are not sufficient to recall the order and condone the delay. It is submitted that the order of dismissing the appeal in default for non-submission of paper book is passed on 14.07.2008. It was expected on the part of the applicant/appellant to have complied with the order to submit the paper book. The reasons assigned for condonation of delay are not sufficient. It is submitted that the appeal is of the year 2006. The accident has taken place on 3rd December, 2002. The claimants are struggling for compensation for last more than 17 years. He therefore urged to reject the application.

5. On due consideration of submissions advanced, I am of the view, the application deserves to be allowed. The appeal was dismissed for non-supply of paper book. The compliance of order remained to be made due to oversight cannot be ruled out in the facts and circumstances of the case. In case, the application is allowed, no serious prejudice would cause to the respondents as ultimately the case will be decided on merits. I am therefore inclined to allow the application. Accordingly, the application is allowed in terms of prayer clauses "B" and "C". The appeal is restored to file.

[V.L. ACHLIYA]
JUDGE

SGA