

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL JURISDICTION****CIVIL APPLICATION NO. 3538 OF 2014****IN****FIRST APPEAL (ST) NO. 27117 OF 2014****WITH****CIVIL APPLICATION NO. 3539 OF 2014**

United India Insurance Co. Ltd.

.. Applicant

Versus

Mrs. Seetabai Timanna Lachkar and Ors.

.. Respondents

WITH**CIVIL APPLICATION NO. 3735 OF 2016**

Mrs. Seetabai Timanna Lachkar and Ors.

.. Applicants

Versus

United India Insurance Co. Ltd.

.. Respondent

...

Mr. K. N. Kandekar for the Applicant in CAF No. 3838/2014 and 3539/2014.

Mr. Prashant Bhavake for the Respondent No. 1 to 4 and 7 in CAF No. 3538/2014 and 3539/2014 and Applicant in CAF No. 3735/2016.

Mr. Anand Patil for the Respondent No. 9.

CORAM: BHARATI DANGRE, J.**DATED : 30th AUGUST, 2019.****P.C:-**

Sonali Patil

This order stands corrected as per speaking to the minutes order dated 23.09.2019.

1. Civil Application No. 3538/2014 seeks condonation of delay of 2 years and 173 days in instituting the First Appeal against the judgment delivered by the M.A.C.T., Kolhapur, in M.A.C Claim No. 442/2005.

2. I have heard the learned counsel for the applicant, who has invited my attention to the contents of the said application, by which the delay is sought to be condoned. Learned counsel appearing for the respondents vehemently opposed the said application on the ground that the applicant has not bothered to offer any reasonable justification seeking condonation of delay and he would submit that the mere ground that it is Statutory Authority and therefore, seeking condonation of delay by way of right, does not hold good.

3. I have perused the application. Apart from stating the reason that legal opinion was sought on the judgment and award before instituting the First Appeal and this has occasioned the delay, there is no explanation offered for delay of 2 years and 173 days. It is no doubt true that the applicant is Statutory Authority. However, the delay cannot be condoned just for the sake of asking, since The Limitation Act, 1963 governs the period of limitation in instituting the appeals/applications and provides for condonation of delay, if same are not filed within stipulated period by way of exception and only in terms of the Section 5 of

the Limitation Act, where sufficient cause is shown. However, at the same time since the applicant is Statutory Authority, it is understood that it had to pass through several hierarchy of Officers and Departments and therefore, equity and justice demand that some lenient view is taken while responding to such applications of Statutory Authority.

4. For the aforesaid reasons, I am inclined to condone the delay by allowing the Civil Application. However, the delay is condoned, subject to payment of cost of Rs.25,000/- to be paid to the respondent-Claimants. Accordingly, Civil Application No. 3538/2014 is allowed in terms of prayer clause (a), subject to the payment of cost of Rs. 25,000/- within a period of 4 weeks. On delay being condoned, Registry is directed to register the First Appeal and it be numbered. Appeal is directed to be listed for admission.

5. Civil Application No. 3539/2014 seeks stay to the impugned judgment. On 13th October, 2014 while admitting the said application, this Court had directed the deposit of entire decretal amount in terms of the order passed by M.A.C.T., Kolhapur, in this Court within a period of 6 weeks. Accordingly, amount has been deposited. In such circumstances, Civil Application No. 3539/2014 is disposed of.

6. Civil Application No. 3735/2016 is filed by the Claimant seeking withdrawal of the amount, which is deposited by the appellant in pursuant to the order passed by this Court on 13th October, 2014. The learned counsel for the applicant would submit that incident which resulted into the death of the deceased was of the 11th May, 1998 and M.A.C.T. has allowed the claim on 3rd December, 2011 and since then the Claimant has not been allowed to reap the fruits of the award. Hardship faced by the applicant is set out in the application and in such circumstances, I am of the considered view that the applicant be permitted to withdraw the decretal amount deposited in this Court by the Insurance Company and said withdrawal however, subject to the final outcome of the First Appeal filed by the Insurance Company and with a clear understanding that in case of Insurance Company succeed in the said appeal, amount would be remitted back.

7. Learned counsel for the Insurance Company informs that the statutory amount of Rs.25,000/- is deposited in this Court. Whereas, the amount of Rs.3,71,000/- is deposited in M.A.C.T. Kolhapur. Since permission has been granted to withdraw the amount by Claimants, deposit of amount in this Court as statutory deposit is directed to be transferred to the M.A.C.T., Kolhapur and on its transfer, the Claimants are allowed to withdraw the entire amount.

Sonali Patil

This order stands corrected as per speaking to the minutes order dated 23.09.2019.

8. Registry is directed to Call for R & P. Matter is directed to be listed after 8 weeks.

SMT. BHARATI DANGRE, J