

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL JURISDICTION
CIVIL APPLICATION NO.2607 OF 2016
IN
CIVIL APPLICATION NO. 230 OF 2007
IN
REJECTED CLAIM NO. 1499 OF 2011

The Employees State Insurance Corporation .. Applicant

Versus

M/s. Henkel Switchgear Limited .. Respondent

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Mr. Mahendra Agavekar I/b. Mr. P. M. Palshikar for Applicant.

CORAM: BHARATI DANGRE, J.

DATED : 30th AUGUST, 2019.

P.C:-

1. Civil Application No. 2607/2016 is taken out by the E.S.I.C., seeking restoration of Civil Application No. 230/2007, which came to be dismissed on failure to effect the service in terms of the order passed by the Court on 28th February, 2007.

2. With the assistance of the learned counsel for the applicant, I have perused the Civil Application. From the application, it emerges that on 28th February, 2007 this Court was pleased to issue notice on group of Civil Applications seeking condonation of delay in filing the First Appeal and which were

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notified together and conditional order came to be passed to effect service on the respondent in absence of which, the application for condonation of delay itself was liable to be dismissed for non-prosecution.

The specific averment is made in the application that it is not correct that applicants have not complied with the direction issued by the Court on 28th February, 2007 and categorical statement is made that service is completed when Advocate on record served the notice in March, 2007, alongwith copy of Civil Application and service was completed on 10th July, 2007. In light of this averment, I am inclined to restore the Civil Application and condone the delay, which is immaterial, since for the reasons apparent that the compliance of order passed on 28th February, 2007 was already done on 10th July, 2007 but inadvertently that was not brought on record and the website reflected Civil Application and First Appeal as pending for pre-admission. The benefit of doubt therefore, needs to be extended to the present applicant and I direct that the Civil Application No. 230 of 2007 be restored to its file. However, this restoration is subject to payment of cost of Rs. 10,000/- to Kirtikar Law Library to be deposited within 4 weeks and it is made clear that the said cost is imposed on account of callous attitude of the applicants. On application being restored, the same be listed for condonation of delay.

3. On the application No. 230/2007 being restored to its file, I have perused the said application. The applicant has made out the case for condonation of delay of 24 days and since the reasons are bonafide. Civil Application No. 230/2007 is allowed. Registry is directed to register the First Appeal and upon registration of the same, issue notice to the respondent, returnable after 4 weeks.

SMT. BHARATI DANGRE, J.