IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1199 OF 2015
WITH
CIVIL APPLICATION NO.1540 OF 2014
IN
CIVIL APPLICATION NO.1368 OF 2010
IN
REJECTED CASE NO.206 OF 2014

United India Insurance Company Ltd. …Applicant

Versus

Shantaram Yeshwant Naik since
deceased through legal heir-
R1A- Jayashree Shantaram Naik and
Ors. ...Respondents

…..

Mr. Ketan Joshi for the Applicant.
Mr. T.J. Mendon for the Respondent Nos.1A to 1F.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 23rd SEPTEMBER, 2019.

P.C.:-

The Appellant-Insurance Company has filed an application (C.A. No.1199 of 2015) to condone the delay in filing the application under Order XXII Rule 9 of the Code of Civil Procedure, 1908 with further prayer to set aside the abatement and to bring on record the legal representatives of the deceased Respondent No.1.

2. The Applicant had filed an application (C.A. No.1368 of 2010) seeking to condone the delay in filing the appeal against the judgemnt and award dated 31st August, 2007 passed by the learned Member, M.A.C.T., Mumbai in Claim Petition No.4399 of 1997. By order dated 13th September, 2013, the said application came to be dismissed for non prosecution. The Applicant filed an application (C.A.1540 No.2014) with a prayer to condone the delay and restore the C.A. No.1368 of 2010.

3. The son of the Respondent No.1 had placed on record the death certificate of the Respondent No.1, which indicated that the Respondent No.1 had died on 6th January, 2012. The legal representatives of the Respondent No.1 were not brought on record hence by order dated 9th April, 2013, the Registrar (Judicial) held that the appeal stands abated as against the Respondent No.1, the original claimant .

4. The learned counsel for the Applicant submits that the Advocate on record could not attend the hearing on the said two dates. It was only after the Advocate on record returned the papers that the Applicant -Insurance Company made enquiries and learnt that the

application was dismissed for non prosecution. The learned counsel for the Applicant states that the Insurance Company had appointed the investigator to ascertain the names of the legal representatives. He submits that the investigator submitted the report expressing inability to ascertain the names of the legal representatives in view of the non-cooperation of the family members of the deceased claimant. The learned counsel for the Applicant states that the Applicant -Insurance Company learnt about the names of the legal representatives of the deceased Respondent No.1-Claimant on 10th February, 2014 i.e. on receiving a notice from M.A.C.T., Mumbai alongwith copy of the miscellaneous application. He contends that the delay was not deliberate or intentional and the same was due to non -cooperation on the part of the legal representatives of the Respondent No.1.

5. The learned counsel for the proposed legal representatives of the Respondent No.1 states that the death of the Respondent No.1 was intimated to the Applicant-Insurance Company. Copy of the death certificate alongwith the names of the legal representatives of the deceased Respondent No.1 was forwarded to the Appellant-Insurance Company. He states that the legal representatives of the deceased Respondent No.1 had filed an application for withdrawal of

compensation. Notice of the application was duly served on the Appellant-Insurance Company in or about March-2014. He submits that the Applicant -Insurance Company was therefore well aware about the death of the Respondent No.1 as well as the names of the legal representatives of the Respondent No.1.

6. The records indicate that after dismissal of the application for condonation of delay, the legal representatives of the Respondent No.1 had filed an application before the Tribunal for withdrawal of the compensation. Notice of this application was served on the Applicant-Insurance Company in March, 2014. It is thus evident that the Applicant-Insurance Company was aware of the names of the legal representatives of the deceased Respondent No.1 at least in the month of March-2014, if not earlier. Hence, the reasons given in paragraph 5 of the application do not constitute sufficient ground to condone the delay.

7. The application for setting aside the abatement has been filed in the month of January, 2015. The Applicant – Insurance Company has not assinged any reasons and has not shown any cause much less sufficient cause for not filing the application immediately

from the date of knowledge. The Applicant, in my considered view has failed to make out sufficient cause either to set aside the abatement or to condone the delay.

8. Under the circumstances, the Civil Application No.1199 of 2015 is dismissed. Since the proceedings have abated against the Respondent No.1 – original claimant, who was the main contesting party, the other applications would also not surive and are accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha Parab Digitally signed by Megha Parab Date: 2019.10.17 17:40:32 +0530