

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 684 OF 2017
IN
REJECTED CASE NO. 589 OF 2017

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Parvez Daruwalla I/b Mulla & Mulla
&CBC for the Applicant.

CORAM: K.K.TATED, J.
DATED : 17/10/2019

P.C.

1 Heard learned counsel for the Applicant.

2 Today the matter is placed on board for speaking to minutes of order dated 26.09.2019.

2 In cause title instead of “**First Appeal No. 96 of 2009**” it should be “**Rejected Case No. 589 of 2017**”

3 Rest of the order remains as it is.

4 Original order stands corrected, which reads thus:

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.684 OF 2017
IN
REJECTED CASE NO. 589 OF 2017**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.Parvez Daruwalla i/b M/s.Mulla & Mulla
& Craigie Blunt and Caroe for the applicant

**CORAM : K. K. TATED, J
DATE : SEPTEMBER 26, 2019**

P.C.:

. Heard.

2 By this Civil Application, Applicant is seeking restoration of First Appeal No.96 of 2009 which stands dismissed in view of conditional order dated 25.1.2011 passed by this court in Civil Application No.16 of 2009. Few facts of the matter are as under:

3 In the present proceeding in an accident which occurred on 26.08.1997 original Claimant Shrikant Mohanlal Sharma injured. Hence, he filed Application under section 166

of the Motor Vehicles Act, 1988 claiming compensation of Rs.10 lacs. That Claim Application was decided by MACT, Mumbai on 23.07.2008 holding that Respondent original Claimant is entitled compensation of Rs.3,76,028/- with interest @ 7.5% p.a. Thereafter, Applicant preferred First Appeal No.96 of 2009. There was delay in filing First Appeal. Hence, Applicant preferred Civil Application No.16 of 2009 for condonation of 36 days delay. That Application was allowed by this court by order dated 25.1.2011 subject to payment of cost of Rs.5,000/- as condition precedent.

4 As the Applicant failed to deposit cost within time, First Appeal stands dismissed. Hence, Applicant preferred present Civil Application. In the present Civil Application, there is a delay of 1 year 18 days.

5 The learned counsel for the Applicant submits that inadvertently it remained on the part of Applicant to deposit cost within time. He submits that because of mistake on the part of court clerk, it remained to pay cost immediately. In support of this contention, the learned counsel for the Applicant relies on paragraph 5 of the Civil Application

which reads thus:

“5. The Applicants state that the Court clerk of this Advocate through inadvertence forgot about the said copy of the order and the Advocate who had appeared in the matter left the Firm for better prospects without informing about the matter to the subordinates. However, the Court clerk informed the Applicants Advocates about the aforesaid unfortunate incident and brought the copy of the order dated 25th January, 2011 passed in the Civil Application No.16 of 2009 on 13th December, 2011 without informing the Applicants Advocates.”

6 The learned counsel for the Applicant submits that they have good chance in the matter. He submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in filing Civil Application and matter be heard on its own merits.

7 It is to be noted that in the present proceeding, original Claimant Shrikant Mohanlal Sharma expired during the pendency of the present proceeding. It is to

be noted that in the present proceeding, initially, there was a delay on the part of Applicant to file First Appeal. Hence, they preferred Civil Application No.16 of 2009. That was allowed on condition to pay cost of Rs.5,000/-. That cost was not paid. Hence, First Appeal stands dismissed. Apart from that, there was delay of more than 1 year 18 days in filing present Civil Application. The reason given by the Applicant in Civil Application is about mistake on the part of clerk. Bare reading of paragraph 5 and 6 of the Civil Application shows that Applicant has filed present Civil Application in casual manner. There is no question of accepting the said reason, but in any case, Applicant being the Corporation, delay can be condoned on payment of cost. Hence, following order is passed:

- a. Delay in filing Civil Application is condoned.
- b. Time to comply the order dated 25.1.2011 passed by this court in Civil Application No.16 of 2009 i.e. payment of cost of Rs.5,000 is extended till 19.10.2019.
- c. In addition to earlier cost of Rs.5,000/-

as per order dated 25.1.2011, Applicant to pay sum of Rs.20,000/- by way of cost for delay in filing present Civil Application.

d. Both the cost be paid in Kirtikar Law Library on or before 19.10.2019 and place on record receipt to that effect, failing which the Civil Application shall stand dismissed without further reference to the court.

e. The Civil Application stands disposed of accordingly.

(K.K.TATED, J.)

(K.K.TATED, J.)