

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

**CIVIL APPLICATION NO. 137 OF 2019
IN
CIVIL APPLICATION NO. 1074 OF 2014
IN
FIRST APPEAL ST. NO. 14265 OF 2013**

The New India Assurance Co. Ltd.

...Applicant

Versus

Chhaubutai Kisan Suryavanshi & Ors.

...Respondents

Mr.S.S.Jinsiwale for the Applicant.

Mr. T.J.Mendon h/f. Mr. S.S. Thorat for Respondent No.4.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 11 APRIL 2019

P.C.:

1. The learned Counsel for the applicant submits that respondent Nos. 1 and 2 have been served in the First Appeal. Respondent No.3 i.e., daughter and respondent No. 5 i.e., driver were not served and, therefore, as per objections raised by Registrar (Judicial-II), the First Appeal had been dismissed by conditional order dated 10th December, 2014 against respondents Nos.3 and 5. He further submits that due to inadvertence, Civil Application No.1074 of 2014 was not moved earlier for restoration and hence, he prayed that the said application be restored. So also permission be given to serve the notice of the Civil Application and First Appeal on respondent Nos. 3 and 5 by publication of the notice in the daily newspaper viz. "Punyanagari". He further submits that

there is a delay of 4 years and 79 days in filing this application. He prays that the said delay be condoned.

2. Heard submissions. There is a delay of 4 years and 79 days in filing this application and it can be condoned only by saddling the costs. However, respondent Nos. 1 and 2, who are the original claimants, have been served and, therefore, the application is allowed in terms of prayer clauses (a), (b) and (c), subject to payment of costs of Rs.5,000/- on or before 2nd May, 2019 to respondent Nos. 1 to 3. If the said costs is not paid within stipulated time, the First Appeal will be dismissed without referring to the Court.

(MRIDULA BHATKAR, J.)