

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

**CIVIL APPLICATION NO.2055 OF 2017
IN
FIRST APPEAL NO.1661 OF 2013**

United India Insurance Company Ltd.	...	Applicant
Versus		
Shri Mahadev Maruti Hawaldar		
And Another	...	Respondents

Mr. Ketan Joshi for the Applicant.
Mr. Victor K. Fernandes for Respondent No.1.

CORAM : K. K. TATED, J.

DATE : 29 JULY 2019

P. C. :

1. Heard Mr. Ketan Joshi, learned Counsel appearing for the Applicant.

2 By this civil application, the Applicant Insurance Company is seeking condonation of delay of two years 230 days, for setting aside the order dated 27 October 2014 passed by the Registrar Judicial-2 by which the First Appeal and Civil Application stand dismissed against Respondent No.2 and for substitute service as per Order 5 Rule 20 of the Code of Civil Procedure, 1908.

3 Learned Counsel for the Applicant submits that the First
Appeal stand disposed off by judgment and decree dated 4 July
2017 passed by this Court. He submits that this Court granted

permission to the Applicant to prefer an appropriate application for substitute service by setting aside the conditional order passed by the learned Registrar. In support of his contention, he relies on paragraph-6 of the order dated 4 July 2017, which reads thus :-

“I will, therefore, of necessity, have to modify the order under appeal in part, limiting the liability of the insurer to Rs.1 lakh only on this limited aspect of the specific condition or provision of the policy. The award is upheld in regard to the total compensation awarded, but the liability of the insurer is limited to Rs.1 lakh. The insurer will be at liberty to recover the remainder from the insured owner. To do so, liberty to the insurer Appellant to take the necessary steps to have the order of dismissal against the 2nd Respondent set aside, obtain an order of substituted service against the 2nd Respondent and then obtain a clarification or further order specifically permitting the Appellant to proceed including in execution against the 2nd Respondent for the principal amount in excess of Rs.1 lakh and the proportionate interest thereon. I will give the Appellant 10 days’ time in which to take such an application, i.e., by 17 July 2017. This matter will be listed at the end of the supplementary board for orders. If that Civil Application for restoration etc is not made by that date, the Appeal will stand dismissed in the terms aforesaid.”

4 Learned Counsel for the Applicant submits that in view of the permission granted by this Court, the Applicant has preferred

the present civil application for restoration of the First Appeal as well as Civil Application No.4683 of 2013 against Respondent No.2.

5 Learned Counsel for the Applicant submits that in the interest of justice, this Court be pleased to condone the delay in preferring the present civil application and allowing the Applicant to serve Respondent No.2 by substitute service as per Order 5 Rule 20 of the Code of Civil Procedure, 1908 and hear the First Appeal and the Civil Application against Respondent No.2 also on merits.

6 Considering the submissions made by learned Counsel for the Applicant and averments in the civil application and as per earlier order dated 4 July 2007 passed by this Court, I am satisfied that the Applicant has made out a case for passing the following order.

: O R D E R :

- i) The delay in filing the civil application is condoned ;
- ii) Order dated 27 October 2014 passed by the Registrar Judicial-2 is set aside ;
- iii) First Appeal No.1661 of 2013 with Civil Application No.4683 of 2013 is restored against Respondent No.2 ;

- iv) The Applicant is permitted to serve Respondent No.2 in First Appeal No.1661 of 2013 and Civil Application No.4683 of 2013 by substitute service as per Order 5 Rule 20 of the Code of Civil Procedure, 1908 by publication in two news papers, one in vernacular language and another in English.
- v) Notice to be made returnable on **30 September 2019**.
- vi) The Applicant to file an affidavit to that effect on or before **15 September 2019**, failing which, the First Appeal No.1661 of 2013 and Civil Application No.4683 of 2013 shall stand dismissed without further reference to the Court ;
- vii) All contentions of Respondent No.2 are kept open in First Appeal as well as pending Civil Application ;
- viii) Civil Application stand disposed off accordingly.

(K. K. TATED, J.)