

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

**INTERIM APPLICATION NO. 2873 OF 2021
AND
INTERIM APPLICATION NO. 112 OF 2021
IN
FIRST APPEAL (L) NO. 98471 OF 2020**

The New India Assurance Co.Ltd. ...Appellant
vs.
Smt.Nisha Santosh Dawande & Ors. ...Respondents

Ms.Deepika Prabhala i/b. Res Juris for Applicant.
Mr.Nikhil Wagh i/b. Avinash Gokhale for Respondent Nos.1,2,3,5 and 6.

CORAM : BHARATI DANGRE, J.

DATED : 12 OCTOBER 2021

P.C. :

1. By the present application, the New India Assurance Co.Ltd., seek stay of the execution, implementation and operation of the judgment and award dated 25 September 2019 passed by the Motor Accident Claims Tribunal, Mumbai in MACP 197/2012. Pertinent to note that this is the second time when the Appellant seek this stay.

2. On 21 January 2021, on Interim Application 113/2021, this court has stayed the effect and operation of the impugned judgment subject to stipulation that the entire amount of compensation with interest shall be deposited in the MACT, Mumbai within a period of four weeks from the date of passing of the order on the undertaking of counsel for the Appellant, which was specifically recorded in para 3 of the order. The order also clarify that if the amount is not deposited within four weeks, ad-

interim relief shall automatically stand vacated.

3. In the wake of para 6 of the order passed on 21 January 2021 when the stay in favour of the Appellant stood vacated on account of their failure to deposit the amount, they have rushed to this court by filing the present application.

4. Perused the interim application. The reason for not abiding of the earlier order dated 21 January 2021 is contained in para 3 of the said application, which reads thus :

“Pursuant thereto, the same was communicated to the concerned Manager of the Appellant Company. That at the relevant time, the concerned officers were either intermittently working or working from home owing to nation-wide lockdown due to covid-19 pandemic. Thus, due to oversight, the Applicant could not comply with the stay order. Due to non-compliance of the said order, the stay order dated 21.01.2021 stands vacated as on today.”

The further response in the application is non-compliance was brought to their notice when the matter reached National Lok Adalat and therefore, fresh stay order is sought.

5. It is trite position of law that a party, who approaches this court and obtains conditional order, must adhere to the condition imposed by the court and this is where the precisely the appellants have to follow. Though an undertaking was given that the entire amount of compensation with interest would be deposited within four weeks, for the reason stated in para 3, the amount is not deposited. Now a claim is made for fair play,

equity and justice that the application be allowed.

6. Justice is not to be only done to the present Applicant, who has filed the application, but justice must also be done to the Respondent, who was awaiting the amount to be deposited, since this court, by order dated 21 January 2021, also permitted withdrawal of 50% amount and claimant has been kept back from the said amount but this amount would otherwise entitle to be withdrawn in the month of February/March 2021 itself. In such circumstances, I am inclined to grant the application and allow the continuation of stay to the impugned judgment subject to a condition that in addition to deposit of the amount, as directed by the order dated 21 January 2021, the Applicant shall makeover the amount of Rs.25,000/- to the Respondent within a period of one week from today.

7. Learned Counsel for the Appellant undertake that the amount awarded under the judgment and award dated 25 September 2019 shall be deposited under MACT, Mumbai within a period of two weeks from today. On such amount being deposited, the paragraph 7 of the earlier order dated 21 January 2021 shall revived and the Respondents are at liberty to withdraw 50% of the amount subject to the same stipulation. As far as remaining amount is concerned, para 9 of the order dated 21 January 2021 shall govern the parties. On the amount being deposited within a period of one week from today, there shall be stay to the execution, implementation and operation of the impugned judgment and award dated 25 September 2019.

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8. Heard learned Counsel for the Applicant and the Respondent.

9. The application seeks condonation of delay of 309 days in instituting the first appeal, being aggrieved by the impugned judgment and award dated 25 September 2019 passed by MACT, Mumbai in Claim Petition No.197/2012.

The delay has occasioned in instituting the appeal is explained in paras 4 to 6 of the application. Some portion of the delay is also attributed to the lockdown declared on account of covid-19 pandemic from 3rd week of March 2020 and since had continued to remain in force till 31 October 2020.

I am satisfied with the reasons stated in paras 4 to 6 of the application and I am of the opinion that no prejudice is caused to the Respondent if the delay is condoned and moreover, the said delay being *bona fide* and beyond the control of the Applicant, I deem it fit to allow the prayer clauses (a) and (b) of the application.

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10. **Admit.**

11. Learned Counsel waives service for the Respondent.

(SMT. BHARATI DANGRE, J.)