

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAO) NO.1464/2019
WITH
MISC.CIVIL APPLICATION ST.NO.14320/2019
IN
FA NO.941/2007(D)
Life Insurance Corporation of India, through its Senior Divisional Manager,
D.O.Nagpur
..vs..
Babarao Ramrao Tadokar (dead), through legal heir Pramila Babarao
Tadokar

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri A.A.Dhawas, Counsel for the Applicant.
Ms Bhavika Hindustani, Adv. h/f Shri H.D.Dangre, Counsel
for the Non-applicant.

CORAM : V.M.DESHPANDE, J.
DATED : NOVEMBER 26, 2021

1. These are two applications filed by the Life Insurance Corporation of India, through its Senior Divisional Manager for condonation of delay in filing application for restoration of the first appeal and application for restoration of First Appeal No.941/2007 which was dismissed by order of Registrar (J) of this Court on 23.6.2009. Delay is of 3663.
2. On 21.8.2019, Notice on these applications was issued by this Court (Coram : M.G.Giratkar, J.) and the said Notice was duly served upon the non-applicant. The non-applicant also put her appearance through an Advocate. However, till today, no reply is filed to these applications.

3. I have heard learned counsel Shri A.A.Dhawas for the applicant and Advocate Ms Bhavika Hindustani h/f learned counsel Shri H.D.Dangre for the non-applicant who submits that because of lapse of 10 years this Court should not restore the first appeal.

4. For deciding these applications, it would be useful to narrate facts, which are as under:

The applicant, the Life Insurance Corporation of India (hereinafter referred to as, "the LIC" for the sake of brevity), filed a suit against non-applicants (hereinafter referred to as, "defendants" for the sake of brevity) for recovery of Rs.2,61,493/- in the Court of learned Civil Judge Senior Division at Nagpur. The said suit was allotted on the file of learned 5th Joint Civil Judge Senior Division at Nagpur. The suit was numbered as Special Civil Suit No.656/1999. On 7.6.2007, the suit was decided by learned 5th Joint Civil Judge Senior Division at Nagpur. A certified copy of the judgment and decree is available on record. Perusal of the said shows that the suit was proceeded against defendants under Order XVII Rule-2 of the Code of Civil Procedure. Learned 5th Joint Civil Judge Senior Division at Nagpur dismissed the suit.

5. At this stage, this Court is not embarking on merits and demerits of judgment and decree dated 7.6.2007 passed by learned 5th Joint Civil Judge Senior Division at Nagpur in Special Civil Suit No.656/1999.

6. After dismissal of the suit, the LIC approached to this Court by filing an appeal under Section 96 of the

Code of Civil Procedure against defendants. The appeal was registered as First Appeal No.941/2007. Record shows that Notices of the said appeal were not issued to defendants by this Court. Record further shows that since the LIC did not take any step, though the appeal was notified on 20.4.2009 for supply of RPAD to defendants within a period of one month, the appeal was dismissed on 23.6.2009. Thereafter also, no step was taken by the LIC.

7. Learned counsel for the LIC submits that in the year 2012 pecuniary jurisdiction of District Courts was enhanced. Resultantly, many first appeals, which were pending before this Court, were transferred to District Courts.

8. It appears that though First Appeal No.941/2007 was already dismissed by Registrar (J) of this Court, mistakenly the said was sent to the District Court at Nagpur and the LIC appeared before District Court at Nagpur. From misc.civil application for restoration of the first appeal, which is on affidavit, it is clear that before the District Court at Nagpur the appeal was renumbered as Regular Civil Appeal No.338/2012 and defendants participated in the said appeal.

9. Be that as it may, when Regular Civil Appeal No.338/2012 was fixed for final hearing on 6.8.2014, learned counsel for the LIC filed a Pursis (Exhibit-11) whereby it was brought to notice of learned Judge of Lower Appellate Court that the appeal is already dismissed on 23.6.2009 by order of Registrar (J) of the High Court of

Bombay, Bench at Nagpur and, therefore, learned Judge of Lower Appellate Court disposed of the mater.

10. It appears that, thereafter, the LIC filed an application for restoration of the appeal along with an application for condonation of delay before learned Judge of Lower Appellate Court. The said proceedings were registered as Misc.Civil Application No.81/2017. Learned Judge below passed order in those proceedings on 19.1.2019. Learned 10th District Judge at Nagpur, while disposing of proceedings filed by the LIC, directed that since the appeal was already dismissed by Registrar (J) of the High Court of Bombay, Bench at Nagpur, proceedings before the said Court will not be maintainable and hence proceedings were disposed of as not maintainable.

11. After the said, present applications for condonation of delay in filing application for restoration of the first appeal and application for restoration of First Appeal No.941/2007, which was dismissed by order of Registrar (J) of this Court on 23.6.2009, are filed before this Court.

12. No doubt, the delay is huge. Duration of delay can never be consideration for deciding application for condonation of delay. What is required to be seen by the Court is, whether the LIC, who is seeking condonation of delay, is successful in pointing out grounds and circumstances resulting into the delay.

13. In this case, as already observed that even before learned Judge below, when the suit was dismissed,

defendants did not appear. Even, when the first appeal was dismissed by Registrar (J) of this court, Notices to defendants were also not issued. It was fault on the part of Registry of this Court in remitting the matter back to the District Court at Nagpur though it was dismissed by order of Registrar (J). The said was beyond control of the LIC.

14. After the matter was remitted to the District Court at Nagpur, Notices were issued to defendants. They participated in proceedings, as it could be seen from typed copies of Roznama filed by the LIC in this proceeding at Annexure-2, page No.25 onward. At no point of time, defendants raised any objection. Obviously, they were also not aware about the dismissal of the appeal by Registrar (J) of this Court.

1. After pecuniary jurisdiction of District Courts is enhanced, definitely the appeal will lie before the District Court. In my view, learned 10th District Judge at Nagpur was right in disposing of the proceeding filed by the LIC for restoration of the appeal as the order of dismissal of the appeal was passed by Registrar (J) of this Court.

2. Since aforesaid narration of facts in preceding paragraphs shows that neither the LIC nor defendants is responsible for nothing, in the interest of justice, I pass following order:

ORDER

(1) Civil Application (CAO) No.1464/2019 and Misc.Civil Application St.No.14320 of 2019 are allowed.

(2) The delay is condoned.

(3) First Appeal No.941/2007 filed by the LIC is restored to file.

(4) Registrar (J) is directed to transfer record and proceedings in First Appeal No.941/2007 to learned District Judge at Nagpur.

(5) After receipt of record and proceedings in First Appeal No.941/2007 from this Court, learned District Judge at Nagpur shall issue Notice to the non-applicant/defendant and decide the appeal in accordance with law.

With this, both civil application and misc.civil application stand allowed and disposed of accordingly.

JUDGE

!! BRW !!

BHUSHAN
RANA
WANKHEDE

Digitally signed
by BHUSHAN
RANA
WANKHEDE
Date:
2021.11.30
17:30:34 +0530