

Dusane

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

WRIT PETITION NO.154 OF 2016

Ramakant Dhondiram Jadhav ...Petitioners

& Ors.

V/s.

Ramdas Pandurang Birar & Ors. ...Respondents

Mr. Nitin Mulye for Petitioners.

Mr. Amol Gatne for Respondent no. 3.

CORAM: MADHAV J. JAMDAR, J.

DATE: 29th SEPTEMBER 2022

P.C.:

1. By the present petition, the Petitioners, who are original claimants before the learned Member, M.A.C.T., Niphad have challenged the common order dated 22nd March 2010 passed below Exhibit-1 in two Review Petitions filed by the Petitioners.

2. By the impugned order, the Petitioners were directed to comply with all objections within 15 days from the date of said order and failing which the petitions were to be dismissed for want of non-compliance of office objections.

3. It appears that the certain office objections were raised in the said review petitions regarding delay in filing the review application, non filing of separate delay condonation application, non filing of certified copies, address list and Court fee stamps. As the Petitioners have failed to remove office objections within 15 days, their review petitions were dismissed.

4. Mr. Muley, learned counsel appearing for the Petitioners pointed out that while passing impugned order granting 15 days for removal of office objections, the learned Member, M.A.C.T. has gone into the merits of the case and opined that the review itself is not maintainable. He further submitted that as the Petitioners have filed an application under Rule 273(4) of the Maharashtra Motor Vehicles Rules, 1989, which is in the nature of review, the objections raised by the office are not maintainable. He submitted that the office of M.A.C.T. has treated the said application as original Claim Petition and accordingly objections are raised.

5. Mr. Gatne, learned counsel appearing for Respondent no. 3 submitted that Respondent no.3 is the only contesting

Respondent in the present writ petition. He submitted that the review petitions are not maintainable and therefore rightly the learned Member, M.A.C.T. has made observations about the same. He submitted that the impugned order is passed on 22nd March 2010. The writ petition challenging the same has been filed on 9th July 2012 and therefore on the ground of delay and latches, the present petition is liable to be dismissed.

6. As far as contention regarding the delay in filing the writ petition is concerned, the same is explained in paragraph 6 of the writ petition. There is no affidavit-in-reply filed by Respondent no.3. Therefore the contentions raised in paragraph 6 have remained uncontroverted. In paragraph 6, the Petitioners have stated that they took advise of their local advocate, who advised them to file writ petition challenging the impugned order. However, Petitioner no. 2 was under treatment and required to spend money for the same and therefore time was required for arranging funds and after arranging the funds, the present advocate was contacted and thereafter steps were taken to file the writ petition. Therefore, there is an adequate explanation in the writ petition regarding delay and latches.

7. Mr. Muley is right in contending that the learned Member, M.A.C.T. while passing order regarding compliance of office objections has made observations regarding merits of the case, which is not permissible.

8. The two major objections are regarding delay in filing the review application and no separate application seeking delay condonation has been filed. It is to be noted that in the review application itself, the Petitioner has stated that there is no delay in filing review petitions and after hearing the review petitions, if the Court finds that there is delay, then in paragraph 3 of the review petition, specific request is made to condone the delay. Therefore, the first two objections on page 32 at Exhibit 'C' do not sustain.

9. It is the contention of Mr. Muley that no Court fees is required to be affixed with the review petitions. The said aspect need not be decided at this stage. The other objections are regarding certified copy and address list. Mr. Muley, the learned counsel for the Petitioners states that if necessary said objections would be complied with, within a period of four

weeks from date of appearance of the Petitioners before learned M.A.C.T., Niphad.

10. In view of above discussion, following order is passed:

(i) The impugned common order dated 22nd March, 2010 passed below Exhibit 1 in Review Petitions filed by the Petitioners seeking review of order dated 12th January 2009 passed by Member, M.A.C.T. and *Ad-hoc* District Judge-2, Niphad in M.A.C.P. No. 60 of 2002 and M.A.C.P. No. 61 of 2002 are quashed and set aside. Review Petitions filed by the Petitioners are restored to file.

(ii) The Petitioners and Respondent no. 3 to appear before the learned Member, M.A.C.T., Niphad on 17th October 2022 and produce copy of this order.

(iii) The Petitioner to supply address list on the said date or any other date as directed by the learned Member, M.A.C.T., Niphad.

(iv) The learned Member, M.A.C.T. is requested to dispose of Review Petitions on/or before 28th February 2023.

(v) The learned Member, M.A.C.T. to decide whether the Petitioners are liable to pay Court fees at the time of disposal of the review petitions, as it is their contention that they are not required to pay Court fees. In case it is found that the Petitioners are liable

to pay the Court fees, the same shall be paid by the Petitioners within a period of one week from such determination.

(vi) It is clarified that this Court has not considered the merits of the Review Petition and all contentions on merits are expressly kept open.

11. The Writ Petition is disposed of in above terms with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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