

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

MISC. CIVIL APPLICATION NO. 55 OF 2022
AND
CIVIL APPLICATION (CAF) NO. 2369 OF 2022
IN
FIRST APPEAL (ST) NO. 10837 OF 2016

National Insurance Co. Ltd.

Vs.

Smt. Prabha wd/o Waman Bisane (Bisan) and Ors.

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

Court's or Judge's Orders.

Mr. B.P. Bhatt, Advocate for applicant.

Mr. M.B. Bahadure, Advocate for respondent Nos.1 to 4.

CORAM : ABHAY AHUJA, J.

DATE : 20.10.2022.

This is an application for restoration of the appeal that was dismissed by a self operative order of this Court dated 08.09.2021, for failure to deposit the amount of compensation undertaken to be deposited in this Court. It is submitted that there was also a delay of 80 days in preferring the Appeal.

2. Mr. Bahadure, learned counsel for the respondents/claimants has filed a reply opposing the restoration. Learned counsel submits that it is only when a distress warrant came to be issued by the

MACT, Bhandara, that the appellant – Insurance Company realised that the appeal has been dismissed pursuant to a self operative order of this Court and therefore, they have filed this application to thwart the attempts of the claimants to their rightful dues. He submits that in the event, this application is allowed, he may be allowed to withdraw at least 75% of the amount already deposited in this Court.

3. Mr. Bhatt, learned counsel for the applicant, has no objection, if the same is allowed to be withdrawn on the basis of usual undertaking and solvent surety.

4. Having heard the learned counsel for the applicant and having perused the application as well as the reply, the following order is passed :

(i) First Appeal on Stamp Number along with Civil Application

(F) 1413/2017 for condonation of delay be restored.

(ii) Let 75% of the amount be withdrawn by the respondent Nos.1 to 4, in equal proportion in the following manner:-

(a) 25% of the aforesaid amount be withdrawn on the basis of usual undertaking that in the event impugned decision is modified or set aside, the said amount would be returned to the Insurance Company.

(b) 50% of the amount be withdrawn on the basis of solvent surety to the satisfaction of the Registrar (Judicial) of this Court.

(iii) Registry to act accordingly.

5. The civil application stands disposed in the above terms.

6. List the matter on 11.11.2022.

JUDGE