IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 847 OF 2024
IN
FIRST APPEAL NO. 1094 OF 2018

The Oriental Insurance Co.Ltd.	…Applicant
Versus	
Smt. Reeta Chandrajeet @ Gabbar Maurya And Ors.	…Respondents

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Mr. Devendra Joshi a/w Pradyumna Thakurdesai for Applicant.
Mr. T.R. Kale i/b T.J. Mendon for Respondent Nos. 1 to 3.

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CORAM : M.M. SATHAYE, J.
DATE : 25th JANUARY, 2024

P.C. :

1. This is an application by the Appellant/Insurance Company seeking restoration of above first appeal, which is dismissed as a consequence of conditional order dated 25 April 2019 for not filing of private paper book within the stipulated time. The application is filed on 23 January 2023. There is delay in filing the application. However till date no reply is filed by the Respondent Nos. 1 to 3/Claimants.

2. The Respondent Nos. 1 to 3/claimants are represented by a lawyer. Respondent Nos. 4 and 5 are owner and driver (who are co-defendants/judgment debtors with Appellant/Insurance Co.) who had remained absent even before the Tribunal. Therefore notice to said Respondents is dispensed with.

3. Considering the averments made in application, which have gone controverted and the fact that appeal has been dismissed for non compliance with procedural requirement of filing paper book, the application is allowed in terms of prayer clauses (a), (b) and (c). The appeal is restored to the file, subject to condition that the Appellant/Insurance Company files private paper book in this Court within a period of 6 weeks from today. It is clarified that if the private paper book is not filed within the said stipulated time, the appeal shall stand dismissed without further reference to the Court.

4. Considering the fact that the when the appeal was admitted and conditional order of paper book was passed on 25 April 2019, simultaneously this Court had permitted the Respondent Nos.1 to 3 / Claimants to withdraw 25% of the amount deposited by the Insurance Company and that now the appeal is being restored and the challenge to the impugned judgment and award is revived, it would be appropriate to balance the equities. Hence, Respondent No.1 is permitted to withdraw further 15% and Respondent Nos. 2 and 3 are permitted to withdraw further 5% each of the awarded amount which is deposited by the Applicant / Insurance Company.

5. Interim Application is disposed of in above terms. All concerned to act on duly authenticated or digitally signed copy of this order.

6. Place the First Appeal after six weeks for further orders.

(M.M. SATHAYE, J.)