



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO. 1500 OF 2020

Alka Gulab Sudrik

....Petitioner

VERSUS

Dattatray Jaysingh Chavhan And Others

.....Respondents

.....

Mr. M.R. Sonwane, Advocate for the Petitioner

Mr. R.R. Karpe, Advocate for respondents No. 1 to 3

Mr. A.S. Usmanpurkar, Advocate for respondent No. 4

.....

CORAM : MANJUSHA DESHPANDE, J.

DATE : 12th MARCH, 2025

ORDER :

1. The Petitioner is challenging the order dated 27.08.2019 passed by Ad-hoc District Judge-3, Ahmednagar in Misc. Civil Application No. 271 of 2017, thereby application filed by the petitioner for setting aside order dated 30.03.2016 dismissing the M.A.C.P. No. 536 of 2010 for default, is rejected.

2. It is the contention of the petitioner that, petitioner had filed M.A.C.P. No. 536 of 2010. The proceedings are filed under the Motor Vehicle Act, for compensation of Rs. 1,50,000/- on 13.08.2010. It is the case of the petitioner that in an accident dated 02.01.2001 at Kuldharan-Karjat road, she sustained

grievous injuries and suffered permanent disability and loss of income. Her right leg was required to be amputated.

3. It is the contention of learned advocate for the petitioner that when the matter was listed for evidence of parties on 30.03.2016, petitioner could not remain present since her daughter was not keeping good health. The matter was fixed for evidence of petitioner on the said date. Though, petitioner could not remain present, advocate representing the petitioner was present and he had filed application for adjournment. However, application filed by advocate was not entertained on the ground that on last three dates, adjournments had been granted to the petitioner. Payment of cost, which was directed to be deposited was also not deposited by the petitioner. In view of her conduct i.e. her absence on earlier three occasions, the claim petition was dismissed for want of prosecution by order dated 30.03.2016.

4. It is contended by learned advocate for the petitioner that petitioner has filed Misc. Civil Application No. 141/2016 along with application seeking condonation of delay. It is submitted that there was delay of four days in filing the application for restoration. The delay of four days in filing

restoration application has been condoned by the Trial Court by observing that delay is satisfactorily explained, hence, application is allowed. When the application seeking restoration of claim petition was heard, the District Judge has passed the order impugned rejecting the application filed by petitioner.

5. It is the contention of learned advocate for the petitioner that, learned Ad-hoc District Judge-3, Ahmednagar has erred in passing said order. Learned Judge has failed to take into consideration that this is a proceeding which is filed under beneficial legislation. Petitioner has suffered permanent disability and therefore, she is claiming compensation. Therefore, it is not in the interest of justice to reject the application for restoration. Though, petitioner has accepted that on earlier three occasions, she could not remain present and even she could not deposit cost, which is imposed on her, she has shown willingness to deposit the cost towards adjournments.

6. The learned advocate for petitioner submits that, learned Judge has proceeded under the misconception that there is huge delay in filing restoration application. He has held that, even after dismissal of petition, Applicant has filed restoration application after considerable delay, which not at all all

explained. In fact, delay the has been explained by the petitioner by giving reason that her daughter was not keeping good health and therefore, she could not remain present. Even the delay of four days occurred in filing the application was already condoned by order dated 03.11.2017.

7. It is his further contention that, though petitioner was not present on 30.03.2016, application was filed by her advocate seeking adjournment. Therefore, at the most, learned Judge should have imposed cost for adjournment. As a result of impugned order, great prejudice is caused to the petitioner since claim petition of petitioner itself stands dismissed on account of dismissal of restoration application. He submits that irreparable loss would be caused to the petitioner, if her claim petition is not restored. Therefore, according to him, order passed by learned Ad-hoc District Judge-3, Ahmednagar deserves to be quashed and set aside by allowing the writ petition.

8. Learned advocate for respondent No. 4 takes exception to the maintainability of present writ petition. He submits that petitioner ought to have filed appeal as provided under Order 43 Rule 1 Sub Clause (c).

9. Learned advocate Shri. Usmanpurkar, appearing for respondent No. 4 submits that petitioner has not properly explained the delay in filing application for restoration, which is also not supported by any document. He further relies on the cross examination of petitioner, wherein she has admitted that before 30.03.2016 on three occasions she has been granted last chance to file affidavit in support of evidence. This reflects lethargic approach of petitioner. According to him, petitioner is not diligent in prosecuting the matter. Therefore, application of petitioner seeking restoration has been rightly rejected by learned Judge. Therefore, he submits that order impugned does not deserve any interference.

10. Learned advocate for respondent No. 1 to 3 also opposes the prayer of the petitioner and has adopted the arguments of learned advocate for respondent No. 4.

11. After hearing the respective parties and going through the order impugned, it is apparent that though the petitioner has admittedly remained absent on three occasions and advocate for the petitioner was very much present before the Court and has filed application seeking adjournment, application though taken on record, Ad-hoc District Judge-3

dismissed the application. Admittedly, petitioner has filed application on 06.06.2016, there was delay of four days in filing the application, which was condoned by the Trial court by observing that delay is satisfactorily explained. The delay is already condoned by the Trial Court, therefore, what remained to be decided by Ad-hoc District Judge-3 was whether the order dated 30.03.2016, deserves to be set aside. The Ad-hoc District Judge-3 has made observations contrary to the record by observing that she has not approached the Court diligently and filed restoration application after more than one year of order of dismissal. When in fact, application was immediately filed. The ground on which restoration has been refused is that, reason for absence on the date on which impugned order was passed is not supported by any document.

12. Considering that petitioner has filed claim petition under the beneficial legislation, the Court should have taken liberal approach and petitioner has also shown willingness to pay cost towards adjournment, which was granted on earlier three occasions. Therefore, in view of willingness shown by petitioner for depositing the cost, restoration application ought to have been allowed by Ad-hoc District Judge-3, Ahmednagar by setting

aside order dated 30.03.2016 in the interest of justice. As a result of rejection of application, great prejudice has been caused to the petitioner. Therefore, in my opinion, order passed by Ad-hoc District Judge-3, Ahmednagar deserves to be quashed and set aside.

13. Though, learned advocate for respondent No. 4 has raised objection to the maintainability of writ petition submitting that Appeal from Order would be maintainable, though there is substance in his contention, however, considering the delay that has already occurred in the proceedings, I do not deem appropriate to consider the objection at this stage and relegate the petitioner to resort to remedy of filing Appeal from Order.

14. In the result, writ petition is allowed.

15. Impugned order dated 27.08.2019 passed by Ad-hoc District Judge-3, Ahmednagar in Misc. Civil Application No. 271 of 2017 is hereby quashed and set aside.

16. Motor Accident Claim Petition No. 536/2010 is restored to its original stage.

17. At this stage, learned advocate for respondent No. 4 requests that considering the delay which has caused in prosecuting the present proceeding, petitioner would not be entitled for interest amount, which is claimed by her for the period from 2016 till the date of passing impugned order. However, I do not propose to pass any order and respondent No. 4 is at liberty to agitate said issue before the Trial Court.

18. Considering the fact that petitioner has filed claim petition in the year 2010, Motor Accident Claim Tribunal, Ahmednagar is requested to decide the claim petition expeditiously.

(MANJUSHA DESHPANDE, J.)