



Meena

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.139 OF 2026
IN
FIRST APPEAL NO. 133 OF 2017

SHAUNAQ ANANT PAI AND ANR. ... APPLICANTS
VS
OMKAR BHAI CHANDRA
CHODANKAR AND 2 ORS. ... RESPONDENTS.

Mr. Vibhav Amonkar, Advocate for the Applicants.

Mr. Y. V. Nadkarni, Advocate Amicus Curiae with Ms. Simran Khadilkar and
Mr. Nilay Naik, Advocates.

CORAM:- VALMIKI MENEZES, J.

DATED :- 12th March, 2026

P.C.:

1. Registry to waive office objections and register the matter.
2. This is an application seeking recall of judgment and award dated 17.06.2022 passed in First Appeal No.133 of 2017. Two grounds on which recall is sought are the following :

a) That the Applicant, who is the Respondent no.1 (driver) in the appeal had been served with notice in the appeal after its admission, and had engaged an Advocate somewhere in the year 2018, who had filed his Vakalatnama on behalf of the Applicant. That the Advocate was later on suffering from dementia and did not appear on behalf of the Applicant at the time the appeal was disposed of by judgment dated 17.06.2022.

(b) That certain events which took place subsequent to the passing of the award of the Motor Accident Claims Tribunal, were not brought on record, for the reasons that the Advocate did not appear in the matter, which fact, is brought to the notice of this Court, which would have resulted in the dismissal of the appeal filed by the Original Claimants under Section 173 of the Motor Vehicles Act. The event referred to in particular, is a judgment of the Sessions Court dated 29.08.2016 by which the Applicant was acquitted of the offence of rash and negligent driving, in the incident, which is the accident referred to in the claim petition.

3. The first question that arises for my decision is whether the application for recall of the judgment and award passed by this Court is at all maintainable.

4. The appeal disposed of by this Court, was an appeal filed under Section 173 of the Motor Vehicles Act. The Goa Motor Vehicles Rules 1991 provide for the procedure for filing of appeals against awards of the Motor Accident Claims Tribunal in Rule 303 thereof. Sub Rule 1 of Rule 303 provides for the form in which the appeal needs to be presented to the High Court and its accompaniments. Sub Rule 2 of Rule 303 provides for the manner in which grounds have to be raised or objections to be taken to the award. Sub Rule 3 of Rule 303 stipulates that the same has been provided by sub Rule 1 and 2, the provisions of order XLI (mistakenly printed as XII) and order XXI of the first schedule of the Code of Civil Procedure shall apply *mutatis mutandis* to appeal preferred in the High Court under Section 172.

5. Perusal of the Rules, as gazetted by the Government of Goa, appears to have a typographical or a printing mistake therein as seen in sub Rule 3 of

Rule 303 where the provisions of “Order XII” has been stated; this appears to be obvious error for typographical omission since it is Order XLI that governs the procedure for filing of a First Appeal under the Code of Civil Procedure and not under Order XII. The mistake becomes obvious from the fact that provisions of Order XXI are also made applicable to appeals preferred to the High Court under Section 173, and this is so since even in execution proceeding, to execute an award, the provisions of Rule 97 to 105 would be applicable and orders passed to the objections to an award, partake of a decree under the Code; such order having a force of a decree passed under Rules 97 to 105 of Order XXI of Code of Civil Procedure are amenable to challenge in a First Appeal under Section 96 of the Code read with Order XLI of the Code of Civil Procedure. I am of the considered view therefore, that the words “Order XII” in sub Rule 3 of Rule 303 is required to be read as “Order XLI” of the first schedule of the Code of Civil Procedure.

6. Further, even for executing an appellate judgment and award passed by the High Court under Section 173 of the Motor Vehicles Act, the very same provisions of Order XXI of Code of Civil Procedure would be applicable for executing such awards before the Motor Accident Claims Tribunal.

7. The mistake in printing words “XLI” in the Rules is also obvious, even views of provision of Rule 303 in different perspectives. Rule 33 was enacted to provide for a form and contents of the memorandum of appeal filed under Section 173 and in substance, the procedure provided for filing appeal under Section 173 appears to be the procedure set out in the Code of Civil Procedure. If one reads the provisions of sub Rule 2 of Rule 303 that the provisions of sub Rule 3, even with the mistakes nomenclature “XII”, there can be no manner of doubt that a clerical or typographical error has been

committed whilst incorporating these provisions in Rule 3, which should be read as “Order XLI”.

8. In *Urmila Devi And Others v/s. Branch Manager, National Insurance Company Limited And Another* reported in (2020) 11 SCC 316. The Supreme Court was considering whether, in terms of Rule 249 of the Bihar Motor Vehicles Rules, 1992, which provides for the manner of filing Appeals under Section 173 of the Motor Vehicles Act, and the applicability of Order 41 CPC, a Cross objection under Order 41 Rule 22 was maintainable. The Bihar Rules, prescribing the manner of Appeals is quoted below:

“12. Rule 249 of the Bihar Motor Vehicles Rules, 1992 reads thus:

249. Manner of appeals. (1) Every appeal against the Claims Tribunal shall be preferred in the form of a memorandum signed by the appellant or an advocate or attorney of the High Court duly authorised in that behalf by the applicant and presented to the High Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the award.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the award against which the appeal is preferred without any argument or narrative and such grounds shall be numbered consecutively.

(3) Save as provided in sub-rules (1) and (2), the provisions of Order 41 and Order 21 in First Schedule to the Code of Civil Procedure, 1908 (V of 1908) shall mutatis mutandis apply to appeals preferred to the High Court under Section 173.”

Considering this Rule, the Supreme Court held that since Sub Rule 3 of Rule 249 provided for applicability of provisions of Order 41 and Order 21

CPC, the filing of cross objections under Order 41 Rule 22 CPC was permissible. The relevant paragraph holding so, is quoted below:

“13. In view of the aforesaid provision, the High Court has rightly come to a conclusion that the claimants would be entitled to file a cross-objection. However, it has restricted the right of the claimants to file cross-objection only when an appeal is filed by the Insurance Company challenging quantum of compensation by placing reliance on previous judgments of the Patna High Court. It has been held, that when the Insurance Company has not challenged the quantum of compensation but only challenges its liability to pay compensation on the ground that there is a breach of terms and condition by the driver and/or the owner of the vehicle, the cross-objection would not be tenable at the instance of the claimants.

9. I must also refer to the Maharashtra Motor Vehicles Rules 1989, wherein Rule 279 makes a similar provision for the form and contents of an Appeal, making the provisions of order 41 and Order 21 CPC applicable in filing Appeals under Section 173. Rule 279 is quoted below:

279. Form of appeal and contents of memorandum.- (1) Every appeal against the award of the Claims Tribunal shall be preferred in the form of a memorandum signed by the appellant or an Advocate or Attorney of the High Court duly authorised in that behalf by the applicant and presented to High Court or to such officer as it appoints in this behalf. This memorandum shall be accompanied by a copy of the award.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the award appealed from without any argument or narrative, and such grounds shall be numbered consecutively

(3) Save as provided in sub-rules (1) and (2) the provisions of Order XXI and Order XLI in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), shall, mutatis mutandis apply to appeals preferred to High Court under Section 173.

10. Thus, we can see that most States have Rules governing the filing of Appeals under Section 173 of the M.V. Act, exactly *pari materia* with Rule 303 of the Goa Rules. All these Rules extend the applicability of Order XLI and Order XXI CPC to the filing of Appeals under Section 173. There is therefore no doubt, that the use of the word “XII” instead of the words “XLI”, in the Rule 303 of the Goa Motor Vehicles Rules is an omission or an obvious typographical error and the words “XII” in the Rule 303 is required to be read as “XLI”.

11. Having held so, the next question that arises before him is whether, in the light of the fact that the provisions of Order XLI are applicable to appeals under Section 173 of the Motor Vehicle Act, would an application for recall of an award passed in appeal to be maintainable, does the party, who seeks setting aside of the judgment and award passed in appeal be required to file an application under Order XLI Rule 21 of the Code of Civil Procedure.

12. Order XLI Rule 21 CPC provides for re-hearing of an appeal at the behest of the Respondent, where the decree, or in this case an award passed *ex-parte* against him. The provisions of Rule 21 Order XLI reads as under :

“21.Re-hearing on application of respondent against whom ex parte decree made.—Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to re- hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.”

13. If the provisions of Order XLI Code of Civil Procedure in their entirety applied to the appeals filed under Section 173, the correct course to have been adopted by the applicant was to file an application under Order XLI Sub Rule

22 stating reasons for seeking a recall of the judgment and award passed in appeal and as in the present case, the judgment and award having been passed on 17.06.2022, the present application having been filed beyond the period of limitation prescribed, an application for condonation of delay stating reasons for the delay would obviously have to be filed. Limitation being a right which ensures in favour of the appellant, cannot be easily taken away by filing an application to seek recall of an order, when the provisions of Rule 21 of order XLI applies. On this count therefore the application would not be maintainable in its present form and the applicant would be required to file an application in the terms of Rule 21 of Order XLI Code of Civil Procedure setting out the grounds for rehearing of the appeal. Considering that the application was filed beyond the period of limitation, or even now, if a fresh application is filed under Rule 21 of Order XLI of the Code of Civil Procedure would be beyond the period of limitation, the applicant would have to make out a case for condoning a delay in filing the same.

14. Additionally, since the application for recall is also on the ground that the judgment of the Sessions Court dated 29.08.2016, has now acquitted the applicant, and this would be a factor to be considered in evidence in appeal, obviously than the provision of Rule 27 of Order XLI of Code of Civil Procedure would also be applicable to such an application or prayer. A composite application for recall of an order with a relief sought to take in evidence a subsequent judgment, which partakes an application under Rule 27 of Order XLI would be impermissible.

15. For all the aforesaid reasons, therefore, I reject the application for recall of the judgment and award dated 17.06.2022 as being not maintainable. However, considering the facts pleaded in the application and the

circumstances made out by the Applicant, I deem it appropriate to grant the applicant leave, if so advised to file an application under Order XLI Rule 21 of Code of Civil Procedure along with an application for condonation of delay, and if further advised a separate application under Order XLI Rule 27 of Code of Civil Procedure for production of the documents on which the applicant relies upon.

16. The Registrar of this Court shall send a copy of this judgment/order to the Department of Law, with a request to the Secretary, Law Department, to consider the observations made herein, and if deem necessary effect such corrections in the original sub Rule 3 of Rule 303 of the Goa Motor Vehicle Rules, 1991 by issuing an appropriate notification in that behalf.

17. Shri Y.V. Nadkarni, learned Advocate, who was appointed by this Court as Amicus Curiae to assist the Court on the question of whether the application was maintainable or whether this Court had review powers sought to be invoked by the applicant. A word of appreciation is in order for Shri Nadkarni who has assisted the Court in arriving at the conclusion stated in the aforementioned judgment.

18. The application stands dismissed as not maintainable with the aforesaid observations.

VALMIKI MENEZES, J.