

In MACP No.743 of 2022

ORDER BELOW EX.16

Perused the application and say of the applicant.

2. Heard Shri P. B. Nair, the learned counsel appearing for insurer and Shri. N. S. Nakhawa, the learned counsel for the applicant.

3. This is an application filed by the Insurer for setting aside the ex-parte Order passed and for taking their Written Statement on record.

4. It is contention of the insurer that they were served with notice on 22.08.2022. However, due to oversight and mistake the notice of the said case was kept in other claim file/disposed of claim file. Therefore, the opposite party no.3 could not appoint the counsel in the matter.

5. It is also contended that recently the matter is traced out and the counsel came to be appointed by the insurer. Moreover, the policy was not found to be issued by the insurer in the name of the Opp. Party No.2, therefore, the matter is under investigation concerning the said claim. The information details and the report were awaited by it in the case wherein the investigation and enquiry of the claim took some time.

6. It is further contended that the insurer therefore could not provide all the relevant and material information to the counsel for the purpose of preparing the written statement. However, the ex-parte order against the insurer is passed on 26.11.2024.

7. It is contended that due to aforementioned reasons, the insurer was prevented from appearing in the matter so also for

filing of the written statement which was beyond its control and delay has caused in appearance through counsel and in filing of written statement within a stipulated period. Hence, prayed for setting aside ex-parte order passed on 26.11.2024, so also prayed for taking the written statement on record.

8. The applicant filed the say vide Exh.18 and submitted that the insurer was duly served upon on 22.08.2022 and despite of service, it failed to appear in the matter, therefore ex-parte order came to be passed on 26.11.2024 in the matter. It is submitted that on 28.10.2025, the counsel for the insurer filed the Vakalatnama along with written statement below Exh.15 without setting aside the ex-parte order dtd.26.11.2024 wherein the applicants have given the say on 14.11.2025. Moreover, on 14.11.2025 the insurer withdrawn the Vakalatnama along with the written statement and filed the application for setting aside the ex-parte order on 02.01.2026 along with the written statement.

9. It is also submitted that the reason mentioned in the application filed by the insurer is not justified and bonafide, hence, prayed for rejection of the same.

10. Perused the application, say and the record.

11. On perusal of the record , it can be seen that the insurer is duly served on 22.08.2022 and as it failed to appear in the matter, therefore, the matter was ordered to be proceeded ex-parte as against the insurer i.e. Opp. Party No.3 vide order dtd.26.11.2024 below Exh.1. Moreover, the insurer without setting aside the ex-parte order filed the Vakalatnama on 28.10.2025 vide Exh.13 along with the written statement vide Exh.15 which came to be not pressed on 14.11.2025. As the Ld.

Counsel for the insurer not pressed the Vakalatnama as well the written statement threfore it was filed.

12. It is also to mention that on 02.01.2026, the insurer filed another application vide Exh.16 for setting aside the ex-parte order so also for taking the written statement on record. Considering the reason mentioned in the applicaton that insurer has merit in the case so also if the ex -parte order is not set aside and written statement is not taken on reocrd, it will cause prejudice to the insruer as it will not get the opportunity to contest the petition. Hence, the follwoing order.

ORDER

1. The application is hereby allowed subject to cost of Rs.1000/- to be deposited with MACT, Mumbai.
2. After deposition of the cost, the Written Statement of the insurer be taken on record.

Date : 21.01.2026

(M. I. Arland)
Chairman,
MACT, Mumbai