

ORDER BELOW APPLICATION (EXHIBIT 65)
IN MOTOR ACCIDENT CLAIM PETITION NO. 55/2016
(SUREKHA & OTHS VS. VIKAS & OTHS.)
(PASSED ON : 15/04/2022)

Nature of the Application.

1. This is an application filed by the opponent No. 1 (for short 'opponent') to set aside dismissed in default order passed below application (Exhibit 60) on 08/03/2022.

Contents in the Application.

2. The opponent has contended that as he and his advocate were out of station, it was not possible for them to remain present and argue on the application (Exhibit 60) and the application is dismissed for default. If the order is not set aside, he will suffer irreparable loss. Therefore, in the interest of justice it is necessary to grant this application.

3. On these grounds the opponent has prayed to grant the application.

Contents in the Say of the Petitioners.

4. The petitioners have filed say.

5. The petitioners have strongly objected the application. The petitioners have contended more than sufficient opportunities were given to the opponent. The application is filed to delay the trial.

6. On these grounds the petitioners have prayed to reject the application.

The Argument.

7. I have heard Shri. B. V. Mule, advocate for the opponent and Shri. A. N. Patil, advocate for the petitioners, at length.

08. They argued in consonance with the contentions in the

application and established principles of law. I will deal with those at the time of discussing the points taken for consideration.

Points and Findings.

09. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons stated below :-

| | <u>Points</u> | <u>Findings</u> |
|----|--|---|
| 1. | Can the dismissed in default order passed below application (Exhibit 60) be set aside, as prayed for ? | Yes. |
| 2. | What order ? | Application Granted, As per final order. |

Reasons as to Point Nos. 1 & 2.

10. The opponent though was aware that he has to argue on the application (Exhibit 60) remained absent and failed to argue.

11. In my view, considering the nature of the petition it is necessary in the interest of justice to allow the opponent to proceed with the application (Exhibit 60).

12. Further, if the opponent is allowed to proceed with the application (Exhibit 60) by setting aside dismissal order the matter can be decided on merits and it will help to avoid multiplicity of proceeding. Therefore, also dismissal order passed below the application (Exhibit 60) is required to be set aside.

13. According to the opponent, it is necessary to file say to the main application. In my view, considering the nature of the petition an

opportunity is required to be given to the opponent to proceed with the application (Exhibit 60) by setting aside dismissal order, which will help to arrive at proper conclusion.

14. Above all, if the application is allowed no harm or injustice will be caused to the petitioners but it will help to decide the petition on merit. Therefore, I am inclined to give an opportunity to the opponent to proceed with the application (Exhibit 60) by setting aside dismissal order in the interest of justice.

15. After giving thoughtful consideration to the facts of the case and the averments made by the opponent in this application and arguments advanced by Shri. Mule, advocate for the opponent, I am of the considered view that for just decision of this petition it is necessary to give an opportunity to the opponent to proceed with the application (Exhibit 60) by setting aside dismissal order in order to find out the truth in the allegations made by the opponent in the application (Exhibit 60) and in the claim of the petitioners.

16. In short, considering the facts and circumstances of the case, I am inclined to grant this application and allow the opponent to proceed with the application (Exhibit 60) by setting aside dismissal order.

18. However, in spite of being aware that he was required to remain present or at least to intimate his advocate to do necessary the opponent has not taken care on 08/03/2022. Moreover, before 08/03/2022 also more than sufficient opportunities were given to the opponent. No sufficient explanation supported by evidence is coming on record by the opponent why he failed to remain present previously and on 08/03/2022. Due to negligence on the part of the opponent, the petitioners have unnecessarily suffered and matter has lingered. The

opponent cannot escape from his liability by merely filing such application at this stage.

19. This non-action in that regard is unexplained and without any legal and valid reason. Therefore, this is a fit case in which the petitioners need to be compensated by awarding suitable costs. The State i.e. the Taluka Legal Services Authority, Pandharpur is also entitled to share the cost amount as directed from time to time by the Hon'ble Supreme Court and the High Court. The cost is quantified at Rs. 500/- (Rs. Five Hundred only) considering the nature of petition, delay caused and the overall conduct of the opponent and the stage of this petition.

20. Accordingly, I answer Point No. 1 in the affirmative and Point No. 2 as application granted, as per final order.

21. In the result, order.

ORDER.

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| 1. | The application (Exhibit 65) is granted, by setting aside the order of 'dismissed in default' passed below the application (Exhibit 60), subject to costs of Rs. 500/- (Rs. Five Hundred only) in addition to previous cost, if any unpaid, to be deposited in the Court on or before 30/04/2022 failing which the application shall stand rejected, automatically. | | |
| 2. | The cost awarded shall be apportioned as herein below :- | | |
| a) | The petitioner Nos. 1 to 3. | Rs. 150/- (Rs. One Hundred Fifty only) each. | |

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|--|----|---|----------------------------|
| | b) | The Taluka Legal Services Authority, Pandharpur. | Rs. 50/- (Rs. Fifty only). |
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(Pronounced in the Open Court).

Dated : 15/04/2022.

(M. B. Lambe),
Ex Officio Member, M.A.C.T.
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a)Name of the Stenographer : Sou. M. M. Kulkarni
- (b)Court : M. B. Lambe, District Judge – 1 & Addl. Sessions Judge, Pandharpur.
- (c)Order signed by P.O. on : 15/04/2022
- (d)Order uploaded on : 15/04/2022