

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.2538 OF 2017
in
FIRST APPEAL (ST) NO.9828 of 2017**

Ms Pooja Vishnudeo Pandey .. Applicant

VS

IN THE MATTER BETWEEN

Reliance Insurance Co Ltd .. Appellant

VS

Smt Baramdevi Vishnudeo Pandey & ors .. Respondents

Ms.Deepika Prabhala I.b M/s Res Juris for Applicant

Mr.Tarun Kumar Sinha for Respondent nos.1 to 5.

CORAM : K.K.TATED , J

DATE : 9th April, 2019

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Not on board. At the request of learned counsel for the Applicant, matter is taken on production board.

2. Heard learned counsel for the parties.

3. By this Civil Application, the Applicant/original claimant is seeking permission to execute the Judgement and award dated 25.7.2016 passed by the Member, MACT, Mumbai in Claim Application No.1237 of 2010 on the ground that though this Court granted six weeks time to the Insurance Company by an order dated 12.10.2017 in Civil Application No.2538 of 2017, to deposit the entire awarded amount with interest,

they failed and neglected to do so.

4. Learned counsel for the Applicant submits that in the present proceedings, the Insurance Company preferred Civil Application No.2537 of 2017 for condonation of 108 days delay in filing the Appeal. In that Civil Application, this Court by an order dated 12.10.2017 issued notices to the respondents returnable on 6.12.2017.

5. Learned counsel for the Applicant submits that the Insurance Company preferred Civil Application No.2538 of 2017 for stay of operation and implementation of the impugned Judgement and award dated 25.7.2016 passed by the Member, MACT, Mumbai in Claim Application No.1237 of 2010 and also for stay of Execution Application filed by them. He submits that this Court by an order dated 12.10.2017 directed the Insurance Company to deposit the entire amount along with interest within six weeks from the date of said order. He submits that till today, the said amount is not deposited by the Insurance Company. To that effect, the Advocate for the Applicant relies on para 4 of the Civil Application in which he made a statement on oath as under :

“4. In view of the above circumstances, it is just and necessary and in the interest of justice, equity, fair play and good conscience that pending the hearing and final disposal of the appeal, interim and ad-interim reliefs as prayed may be granted. The applicant submit that if the reliefs as prayed are granted, no prejudice shall be caused to the respondents and if the same are not granted, irreparable loss and injury shall be caused to the applicant which cannot be compensated in terms of money. The balance of convenience therefore, is in favour of the applicant.”

6. Learned counsel for the Applicant submits that thereafter

Civil Application No.2537of 2017 and 2538 of 2017 appeared before the Learned Registrar (Judicial-II) on16.2.2018, 26.3.2018 and 2.5.2018. He submits that on 2.5.2018 the learned Registrar (Judicial-II) passed the following order :

“ Three weeks time to take steps as against unserved respondent nos.5 and 7 failing which, both the Civil Application shall stand dismissed against the unserved respondent nos.5 and 7.

7. The learned counsel for the applicant submits that in view of this fact, interim relief granted by this Court stood vacated and the Applicant may be permitted to execute the Judgment and award passed by the Tribunal on its own merits.

8. On the other hand, learned counsel Mr.Sinha for the Insurance Company submits that he has misplaced his papers and hence, he requires some time.

9. Considering the submissions made by the learned counsel for the Applicant/original claimant and as the Insurance Company failed and is negligent to comply with the order dated 12.10.2017, there is no question of continuing the stay granted by this Court. Hence, the following order :

ORDER

(A) The Applicant/claimant is permitted to execute the Judgment

and award dated 25.7.2016 passed by the Member, MACT, Mumbai in Claim Application No.1237 of 2010 on its own merits.

(B) The Tribunal is directed to consider the Execution Application if filed by the claimant on its own merits.

(C) For remaining reliefs, liberty is granted to the Applicant to take out appropriate application in that behalf.

(D) Civil Application stands disposed of accordingly. No order as to costs.

{K.K.TATED, J}