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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 5 OF 2018
IN
FIRST APPEAL NO. 418 OF 2016**

Girish Gopal Nair & Ors ...Applicants
Versus
Divisional Manager The New India Assurance Co ...Respondent
Ltd

**WITH
CIVIL APPLICATION NO. 967 OF 2016
IN
FIRST APPEAL NO. 418 OF 2016**

Divisional Manager, The New India Assurance ...Applicant
Co Ltd
Versus
Girish Gopal Nair & Ors ...Respondents

Mr DR Mahadik, *for the Applicants/Appellant.*
Ms Yashashree Munde, *i/b Parinam Law Associates for Respondents*
Nos. 1 & 2 and for Applicant in CAF/5/2018.
Mr Yogesh Pande, *for Anil Patani (Pune Trial Court)*

**CORAM G.S. Patel &
Gauri Godse, JJ.**
DATED: 19th October 2022

PC:-

1. It is difficult to express the extent of our dismay and disappointment at the way in which the Advocates for the original claimants have conducted themselves in this First Appeal that comes up from the Motor Accident Claims Tribunal (“MACT”) Pune. The matter first came before us a few months ago. When we took up the matter on 22nd September 2022, we noticed that on 13th February 2019, a Division Bench of this Court had allowed a withdrawal by the 2nd Claimant, Gautam Nair, of part of the amount deposited by the insurer Appellant with the MACT Pune. At that time the 2nd claimant, Gautam Nair, needed funds for his higher education. We noted these directions. We were then informed by Ms Munde appearing for the claimants that the order was communicated to the Claimants. The bank account details of Gautam Nair were said to have been provided to MACT Pune. By then, Gautam Nair had attained majority. We were persuaded to believe that despite this, MACT Pune did not remit the permitted withdrawal of Rs. 30 Lakhs. For over two years, until 22nd September 2022, that order of 13th February 2019 remained without compliance. We asked for an explanation from the Registrar, MACT Pune. In any case we directed the MACT Pune to remit the entire amount of Rs. 30 Lakhs to that bank account. What we did not then note but are constrained to do today. is the reason supplied by Ms Munde for this extraordinary delay. We are told that the 13th February 2019 order remained without compliance “on account of Covid”. Even then we had pointed out that the Covid onset was not till March 2020 and did not explain the delay since February 2019.

2. On 14th October 2022, we noted our previous order of 22nd September 2022. We were then clearly told that MACT Pune had

declined to make the remittance and had insisted on a personal undertaking and the personal presence of Gautam Nair. We were told that he is away in the United States. We asked for an explanation from the Registrar of MACT Pune through our Registrar Judicial – I. In paragraph 3 we expressed our strong displeasure about the MACT Pune and its Registrar. When we did so on 14th October 2022, we proceeded on the basis of what was conveyed to us by Ms Munde appearing for the claimants.

3. We now have every reason to doubt the correctness of what was told to us by the learned Advocate. The MACT Pune has never declined to remit the funds. It has not insisted on the personal presence of Gautam Nair, the 2nd claimant. It has not insisted on an undertaking by the 2nd claimant either. There is an application dated 10th October 2022 filed by the 1st claimant, Girish Nair, Gautam Nair’s father, that is accompanied by his own undertaking.

4. Mr Pande appears today holding for Advocate Anil Patani who is on record for the claimants before the MACT Pune. Mr Patani has addressed an e-mail of 15th October 2022 to the claimants and to Ms Munde pointing out that an entirely erroneous submission was made to this Court on 14th October 2022. He has clearly said that no application for withdrawal was ever made to the MACT Pune since 2019 until 10th October 2022. Mr Patani has in these circumstances opted to withdraw his Vakalatnama from the pending Darkhast No. 277 of 2015.

5. As a first order of business, we would request, although we cannot insist, that Advocate Mr Patani should reconsider his decision. We convey this through Advocate Mr Pande. Although this is a request from the Court, it is ultimately for Mr Patani as a practitioner to decide what he wishes to do. Our reason for making this request is to ensure the interests of the claimants at least in the Darkhast proceedings can be properly served henceforth.

6. There is an explanation provided by Assistant Registrar MACT Pune. It is dated 15th October 2022. It notes specifically that for the first time the application that was made for withdrawal was of 10th October 2022. This means that from 13th February 2019 until we intervened, the Advocates for the claimants in the First Appeal had done absolutely nothing. This reflects very poorly on the law firm engaged by the claimants in the First Appeal. We are wholly unable to understand how this delay from February 2019 onwards could be said to be in service of the claimants. We do not even accept the excuse of the Covid because the impression sought to be given is that all Courts in Maharashtra had fully shut down for two and half years. Everybody knows that this is entirely untrue. Our courts were functioning, even if not at full strength. Registries were operational. Apart from the fact that Covid did not start till March 2020, even from March 2020 till 2022, online transfers and remittances were always being continued. Administrative work may have been delayed by a few days, but it was not halted. Thus, the delay in implementation is from about 13th February 2019 until 10th October 2022. That delay by any standards is wholly unconscionable. A photocopy of the application of withdrawal dated

10th October 2022 is tendered which is taken on record and marked as 'X1' for identification with today's date.

7. We will accept Ms Munde's statement that she has done her utmost since she began handling the matter in September 2022. This does not mean that we are satisfied with the way in which the claimants' cause has been handled since 2019 by her firm. We are still not shown any material that indicates that the claimants were informed of the 13th February 2019 order.

8. As the matter currently stands, we are told that the amount of Rs. 30 Lakhs has been remitted by the MACT Pune to the bank account of the 2nd claimant Gautam Nair. The statement is noted.

9. The remarks in paragraph 3 of our order of 14th October 2022 will be treated as expunged from the record. We express our regret and convey our apologies to the Assistant Registrar, MACT Pune. We were misled as to the actual circumstances. A copy of this order will, as a matter of courtesy, be conveyed by the Registrar Judicial - I to the Assistant Registrar, MACT Pune.

10. Lastly, we reiterate our request to Mr Patani to continue in the Darkhast proceedings.

(Gauri Godse, J)

(G. S. Patel, J)