

Court No. - 40

Case :- WRIT - C No. - 39122 of 2023

Petitioner :- Smt. Jagwati

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Anoop Singh, Ashok Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner and Sri R.M. Upadhyay, learned Additional Chief Standing Counsel for the State respondents.

2. By means of present writ petition, the petitioner has sought following reliefs:-

"A. A writ of certiorari to quash order dated 17.6.2023 passed by respondent no.2 in letter no.919/7 Bhulekh, illegally dismissing claim for compensation under Mukhyamantri Kishan Accident Kalyan Yojana and decided representation of petitioner."

3. Learned counsel for the petitioner submits that the son of the petitioner namely Manoj Kumar had met with a road accident on 12.8.2022. Unfortunately, he succumbed to injuries on 21.8.2022. After his untimely demise, the petitioner had moved an application for ex-gratia payment in the light of the scheme known as "Mukhyamanti Kisan Evam Sarvhit Beema Yojna" along with requisite documents on 14.11.2022 but in most arbitrary manner the said application was rejected by the second respondent on 17.6.2023 on the ground of laches. He submits that the claim of the petitioner is sustainable in the light of the judgment and order of this Court dated 22.9.2021 passed in Writ C No.19071 of 2020 (**The Oriental Insurance Company Limited, Muzaffarnagar vs. Smt. Sanjesh and 2 others**), wherein the Insurance Company had challenged the order dated January 4, 2020 passed by Permanent Lok Adalat, Muzaffarnagar, whereby the claim of Smt. Sanjesh, was allowed and Insurance Company was directed to pay Rs.5 lacs to Smt Sanjesh under the "Mukhyamanti Kisan Evam Sarvhit Bima Yojna". The aforesaid writ petition was dismissed by this Court on 22.9.2021. The Oriental Insurance Company Limited had assailed the said judgement dated 22.09.2021 in Special Leave to Appeal (C) No(s).3978/2022 (**the Oriental Insurance Company Limited vs. Sanjesh & another**) 2022 LiveLaw (SC)303 and Hon'ble the Supreme Court had proceeded to dismiss the SLP on 11.03.2022

on the ground that the condition of lodging claim within a period of one month, extendable by another one month is contrary to Section 28 of the the Indian Contract Act, 1872 and thus void. Relevant part of the order is reproduced herein below:-

"The sole arguments raised by learned counsel for the petitioner is that the claim was not filed within a period of one month or extending condonable period of one month.

We do not find any merit in the said arguments in view of Section 28 of the Indian Contract Act, 1872 (for short, the Act?) which reads as under:-

28. Agreements in restraint of legal proceedings, void.? [Every agreement,? (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.]?

In view of the aforesaid Section, the condition of lodging claim within a period of one month, extendable by another one month is contrary to Section 28 of the Act and thus void.

In view of the said fact, we do not find any ground to interfere with the order passed by the High Court.

The special leave petition is, accordingly, dismissed."

4. Learned counsel for the petitioner, in this backdrop, submits that in view of the aforesaid judgment, the order impugned is unsustainable and liable to be set aside.

5. So far as factual and legal aspect is concerned, the same is not disputed by learned counsel for the respondents.

6. Considering the facts and circumstances, we set aside the order dated 17.6.2023. The matter is remitted back to the competent authority to consider and decide the application of the petitioner in accordance with law and in the light of judgment in Sanjesh's case (supra) expeditiously and preferably within six weeks from the date of production of certified copy of this order.

7. The writ petition stands **partly allowed** accordingly.

Order Date :- 16.11.2023

SP/