

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 714 of 2014**

- Mohan Yadu S/o Mukut Ram Yadu Aged About 30 Years R/o Village Rohra Near To Munna Yadu House Neem Choura, Tahsil Simga, P.S. Bhatapara Distt. Baloda Bazar Bhatapara C.G.

---- **Petitioner****Versus**

- Golu Yadu S/o Chhotelal Yadu Aged About 18 Years R/o Village Bodari P.S. Chakarbhata Distt. Bilaspur C.G.

---- **Respondent**

For Petitioner	:	Shri Hemant Gupta, Advocate
For Respondent	:	Shri Sushobhit Singh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****29/09/2015**

1. Petitioner has called in question the impugned order dated 20.08.2014, passed by the Commissioner, Employees Compensation-cum-Labour Court, Bilaspur (for short 'the Commissioner'), rejecting his application under Order 9 Rule 13 CPC read with Section 5 of the Limitation Act.
2. Facts of the matter, in short, are that on 10.02.2011, the petitioner engaged the respondent to operate paddy straw cutting machine. In course of the said operation, the respondent suffered accident and his right hand was amputated. A criminal case was instituted against the petitioner for offence under Section 279 and 338 IPC and thereafter the respondent moved application for compensation under Section 22 read with Section 10 of the

Employees Compensation Act, 1923.

3. In the proceedings before the Commissioner, the petitioner was issued notice, which he allegedly refused to accept, therefore, the Commissioner proceeded *ex parte* and passed an *ex parte* award on 01.03.2012. As soon as the petitioner became aware about the *ex parte* award, he moved an application under Order 9 Rule 13 CPC for setting aside the *ex parte* award and it is this application which has been rejected by the Commissioner by the impugned order.
4. It is argued that the petitioner never refused to accept the notice, therefore, *ex parte* proceeding was not at all justified. He would submit that since the award has been passed without noticing the petitioner, the same requires to be set aside.
5. Learned counsel for the respondent would submit that since the petitioner has refused to accept notice, there was valid service on him and the Labour Court has not committed any illegality in proceeding *ex parte* against the petitioner.
6. Record of the Labour Court is available. The envelope containing the registered notice carries an endorsement of the postman that the petitioner has refused to accept notice, however, the endorsement is not supported by signatures of two witnesses who have seen the petitioner refusing to accept the notice. In the application under Order 9 Rule 13 CPC, the petitioner has categorically stated that the postman never tendered notice to him. The record does not indicate that on such submission being made, the Labour Court proceeded to record evidence of the parties including the postman, to satisfy itself as to whether there was a valid tender of notice on the petitioner. In the absence of such enquiry and the petitioner having stated

that the notice was never tendered on him, the Labour Court was not justified in proceeding *ex parte* to pass an award saddling the petitioner to pay compensation of Rs.226380.00.

7. For the foregoing, this Court is of the opinion that the Labour Court should have recorded evidence of the parties before proceeding to decide the application under Order 9 Rule 13 CPC. Accordingly, the impugned order is set aside and the matter is remitted back to the Labour Court for deciding the application under Order 9 Rule 13 CPC, afresh after giving the parties opportunity to lead evidence. Let the proceedings be completed by the Labour Court within a period of three months from the date of receipt of certified copy of this order.
8. Till the application under Order 9 Rule 13 CPC is decided afresh, the execution of the *ex parte* award shall remain stayed. Record of the Labour Court be sent back forthwith.

Sd/-

Judge
Prashant Kumar Mishra

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