

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.9 OF 2014 WITH
CIVIL APPLICATION NO.590 OF 2014

1. Faizoddin s/o Zindasab Badure
Age 65 years, Occ. Agri.
2. Zinda s/o Faizoddin Badure,
Age 29 years, Occ. Business,

Both R/o Dadapir Dargah Road,
Nilanga, Tq. Nilanga, Dist.Latur. ... APPELLANTS

VERSUS

1. Taherabee w/o Shamshoddin Khadke
Age 39 years, Occ. Household,
2. Nagma d/o Shamshoddin Khadke,
Age 16 years, Occ. Education.
3. Naziya d/o Shamshoddin Khadke,
Age 14 years, Occ. Education,
4. Shahrukh s/o Shamshoddin Khadke,
Age 13 years, Occ. Education.
5. Shabana d/o Shamshoddin Khadke,
Age 12 years, Occ. Education,

Nos.2 to 5 minors, u/g of
Respondent No.1- mother

All R/o Gauspura, Taluka and
District Latur. ... RESPONDENTS

.....
Shri A.S. Deshpande, Advocate for appellants
Shri R.P. Adgaonkar, Advocate for respondents
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CORAM: A.I.S. CHEEMA, J.

DATED: 3rd February, 2015.

ORAL JUDGMENT :

1. Heard finally with consent of counsel for both sides.
2. The appellants have filed the present Appeal from Order against the order dated 19.11.2013, passed by Commissioner for W.C. Act & Judge, Labour Court, Latur in Misc. W.C.A. No.1/2011, vide which order the Commissioner rejected the application for restoration of proceedings W.C.A. No.170/2009, which was disposed by exparte judgment dated 12.1.2010.
3. It has been submitted by the learned counsel for appellants that deceased Shamshoddin, while working as Mason on the construction which the appellants were getting done, died due to electric shock and respondents filed W.C.P. No.170/2009 for compensation. According to him, in the said proceedings, notices were issued and subsequently exparte order came to be passed as it was reported that the notices sent to the appellants were refused by them. It is submitted that, the appellants claimed that they never refused any such notices from the Workmen's Compensation Commissioner and thus, the exparte order was required to be set aside. For this purpose, the

Commissioner was moved and the appellant No.1 had examined himself, but the Commissioner disbelieved the appellant and rejected the application. The submission is that, with M.C.A. No.590/2014, the appellants have filed copy of Kabuliyatnama, which shows that, out of sympathy the appellants had already paid Rs.80,000/- to the respondents, but still they filed the compensation claim. It is submitted that, the deceased was only a Mason working and thus, the appellants were not liable to pay the compensation under the Act, but out of sympathy they had already paid Rs.80,000/-.

4. Counsel for respondents submitted that the document of Kabuliyatnama shows the relationship between deceased and the appellants and the respondents never denied that Rs.80,000/- was received and in fact showed the same in the application W.C.P. No.170/2009 filed for compensation. The claim was more and the amount received was deducted. He submitted that, the appellants did not examine any Postman to show that they had not refused or that the Postman's endorsement on the notice envelope was wrong. He submitted that, the appellants realised their error only when recovery warrant was served on them. The counsel submitted that, the reasonings recorded by the Commissioner are sound and based on record and there is no reason to interfere.

5. The point for determination is :-

Whether the impugned order is correct,
legal and proper ?

6. There is no dispute regarding the fact that when the application for compensation was filed, notices were issued, which, in the record of the Commissioner, came back with endorsements of refusal. There is no dispute regarding the fact that the notices contained correct addresses of appellants. The appellant No.1, no doubt, gave his evidence before the Commissioner to support claim of appellants. The Commissioner, however, has reasoned that, the appellant No.1 admitted that the envelopes were having correct address and that the appellant had not taken any steps against the Postmaster for his act of putting wrong remarks on the envelope. The envelope had endorsement of refusal to accept the notice. The Commissioner held that the appellants failed to show any sufficient cause which prevented them from appearing in the original proceedings and thus, he found that they were not entitled to reliefs.

7. There is nothing to show that the concerned Postmaster or the post office had any axe to grind against the appellants. The endorsement made in the ordinary course of business cannot be doubted. There is no material to suspect the

endorsement of refusal of notices referred to by Commissioner. If the appellants refused the notice, they cannot be subsequently heard to say that the ex parte order cannot be sustained. The order passed by the Commissioner cannot be said to be not correct or not legal or not proper. For such reasons, I do not find that there is any substance in the appeal.

8. The appeal stands dismissed with costs.

9. Counsel for the appellants makes request that the execution be stayed for four weeks as the appellants desire to challenge the present order. The execution is stayed for four weeks, as requested.

10. In view of dismissal of the Appeal from Order, Civil Application No.590/2014 does not survive and stands disposed of.

11. Authenticated copy permitted.

(A.I.S. CHEEMA, J.)