

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CIVIL WRIT PETITION NO. 8665 OF 2015

Anand Shivram Samant.

... Petitioner.

V/s.

M/s. Kansai Nerolac Paints Ltd., & Ors.

... Respondents.

Mr. Vijayprakash Yadav i/b. Devmani Shukla for the Petitioner.
Mr. R.N. Shah a/w. Netaji Gawade i/b. M/s. Sanjay Udeshi & Co.
for Respondent 1.

CORAM : N.M. JAMDAR, J.

DATE : 12 OCTOBER, 2015.

P.C. :-

The Petitioner challenges the order passed by the Industrial Court, Kolhapur dated 10 June 2015 rejecting the application filed by the Petitioner for setting aside the order passed on 26 September 2012 dismissing the complaint for want of prosecution.

2. The learned Counsel for the Petitioner submitted that in the complaint the Petitioner has challenged the action of the Respondent – employer of transferring the Petitioner from

Ratnagiri to Kanpur and that the Petitioner had joined at the transferred place in Kanpur and therefore, the complaint filed by him could not be diligently prosecuted. He submitted that no prejudice will be caused to the Respondent if the complaint is restored and matter is heard on merits. The learned Counsel for the Respondent opposed the Petitioner on merits as well as contending that the Industrial Court will not have any power to condone the delay which has admittedly, occurred in the present case.

3. The Petitioner was transferred to Kanpur by order dated 9 December 2011. No interim relief was granted in the complaint and the Petitioner joined at his transferred post. The complaint was dismissed on 26 September 2012 by the Industrial Court after noting that in spite of the fact that the complaint was expedited and was to be disposed off within one year, the Petitioner and his Counsel remained absent and the complaint was dismissed. An application for restoration was filed by the Petitioner on 9 January 2015. In the Application, the Petitioner has stated that since he was working at Kanpur and that he had not given day today instructions to the Advocate, the Advocate could not remain present and also could not file the application in time.

4. These arguments cannot be accepted. If the complaint was expedited at the instance of the Petitioner by the Industrial

Court, the Petitioner ought to have shown more diligence in communicating with his Advocate and furthermore, there is no reason why the Advocate could not remain present and for each date for attendance before the Court.

5. Apart from this position, in view of the decision of the Division Bench of this Court, in Letters Patent Appeal No. 314 of 2007 in Writ Petition No. 1820 of 2007 alongwith 11 other connected Letters Patent Appeals dated 12 March 2009, the contentions of the learned Counsel for the Respondent regarding powers of the Industrial Court to condone the delay, will have to be accepted. The Division Bench has observed in paragraphs 6 and 7 as under :-

“ 6. M.R.T.U. and P.U.L.P Act, 1971 is a special Act. Subsection (1) of Section 31 provides for consequences of non-appearance of parties and subsection 2 of Section 31 provides that where any order is made ex-parte under subsection (1), the aggrieved party may, within 'thirty days' of the receipt of the copy thereof, make an application to the Court of the copy thereof, make an application to the Court to set aside such order. It is the case of the appellant that though the order was passed by the Industrial Court on 30.07.2003, they learnt about the same on 05.02.2004. Hence, there is delay in preferring application for setting aside ex-parte order. Even assuming the Appellants learnt about the said order on 05.02.2004, it is seen that the application for setting aside the ex-parte order has been preferred by the

Appellants only on 03.08.2004 i.e. after six months after they learnt of the order being passed. The application is preferred way beyond the period of 30 days. The Industrial Court has rightly held that it has no power to condone the delay under Section 31 of the Act beyond the period of 30 days.

7. *The learned Single Judge has relied on the decision in the case of Dilip Vithalrao Jogdand v/s. Vaidyanath Urban Co-op. Bank Ltd., reported in 2007 II CLR 78 wherein it has been held, relying on the decision of the Division Bench at Aurangabad in L.P.A. No.3 of 2004, that the Industrial Court has no power to condone the delay beyond 30 day in filing the restoration application. The learned Single Judge has also placed reliance on the decision of the Division Bench in L.P.A. No.3 of 0204 in Writ Petition No. 631 of 2003 wherein it is observed thus -*

“ We have considered the scheme of Section 31 of the M.R.T.U. & P.U.L.P Act, 1971 and subsection (2) therein enables an aggrieved party to file an application for restoration within a period of 30 days. There is no power with the Court concerned to condone the delay on the lines of such a power as he has been provided under Section 30 of the Act.”

In view of the legal position the learned Single Judge was right in holding the restoration application, which has been filed beyond the period of 30 days, cannot be entertained by the Industrial Court and the delay cannot be condoned as the powers of the Industrial Court are circumscribed by the provisions of Section 31(2) of the Act.”

6. The observations of the Division Bench are clear regarding the power of the Industrial Court.

7. In view of this position, the impugned order cannot be set aside.

8. It is informed that the Petitioner is now transferred from Kanpur to some other place. The Petitioner can always challenge the subsequent order of transfer if permissible in law and therefore, the Petitioner is not prejudiced.

9. The Writ Petition is accordingly rejected. No order as to costs.

(N.M. JAMDAR, J.)