

JPP

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

WRIT PETITION NO. 5862 OF 2015

Mr. Sanjay Balu Kamble. ... Petitioner.

V/s.

M/s. Caspro Metal Industrial Pvt. Ltd. ... Respondent.

with

WRIT PETITION NO. 5946 OF 2015

Mr. Manik Vasant Koli. ... Petitioner.

V/s.

M/s. Caspro Metal Industrial Pvt. Ltd. ... Respondent.

Mr. Ravindra Nair for the Petitioner in both Petitions.

Mr. Abhay Nevagi a/w. Sandesh Shukla i/b. Santosh Sawant for the Respondent in both Petitions.

CORAM : N.M. JAMDAR, J.

DATE : 24 NOVEMBER, 2015.

ORAL ORDER. :-

Rule. Rule made returnable forthwith. Respondent waives service. Taken up for final disposal by consent.

2. By these Petitions the Petitioners challenge the order passed by the Labour Court, Kolhapur setting aside the ex-parte Award dated 7 May 2014.

3. Reference (IDA) No. 161 of 2010 which is subject matter of Writ Petition No. 5862 of 2014 and a Reference (IDA) No. 162 of 2010 which is subject matter of Writ Petition No. 5946 of 2015 in respect of termination of the Petitioners was referred for adjudication to the Labour Court, Kolhapur. The matter was adjourned from time to time. As Roznama shows, on series of dates it was adjourned because the Advocate for the Respondent was not present. On some date the reason given was that the Advocates were on strike and on various dates costs were also imposed on the Respondent for the purpose of granting adjournments. Finally, when the matter was taken up by the Labour Court on 19 May 2014, the Labour Court was again called upon to adjourn the hearing and the reason given was that the Advocate for the Respondent was not available. The Labour Court noted that even though the matter is fixed for final Award, the Respondent had taken the proceedings lightly and taken adjournment by giving baseless reasons and proceeded to pass the award answering the reference in affirmative by setting aside the termination order issued to the Petitioners and their reinstatement.

4. The Respondent thereafter filed an application giving reason as to why the Advocate could not remain present and upon

this application, by impugned order dated 18 May 2014, the predecessor of the Presiding Officer recalled the order passed on 19 May 2014 which is subject matter of the present Petitions.

5. Considering the fact that the Labour Court has given an opportunity to the Respondent to put-forth its case and that the Counsel for the Respondent on instructions is making a statement that the Respondent will deposit the entire amount of Rs.5,00,000/- in both these Petitions (Rs.2,50,000/- each) and the fact that now only the oral arguments need to be advanced, normally, I would not interfere with the impugned order. However, the exasperation of the Labour Court in proceeding to pass final orders can be well understood if the Roznama is perused. Series of adjournments were taken by the Respondent. Even imposition of costs have not deterred the adjournments on the ground that the Advocate is not available. Even reasons such as strike of the Advocates is given for adjournments. This not a desirable state of conduct. The Presiding Officer cannot be reduced to state of helplessness because the Advocate choses not to appear. However, since the concerned Advocate has filed his personal affidavit tendering an apology, I do not wish to precipitate the matter further. It is expected that in future the concerned Advocates and his colleagues will avoid a situation where affidavits of apology have to be filed.

6. Considering the facts and circumstances, as noted

above, the Writ Petitions are disposed off by following order :-

(a) The impugned order passed on 18 December 2014 are maintained subject to the Respondent depositing the amount of Rs.5,00,000/- (Rs.2,50,000/- each) in the Labour Court, Kolhapur within period of two weeks from today.

(b) The parties shall appear before the Labour Court on 14 December 2015 wherein the Labour Court, Kolhapur will give a date for oral arguments in both these References.

(c) The Respondent shall pay cost of Rs.10,000/- each to the Petitioners within period of two weeks from today.

(d) The learned Counsel for the parties assure that they will co-operate with the Labour Court for early disposal of the References.

6. Rule made absolute in the above terms.

(N.M. JAMDAR, J.)

