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WP-6860-2014
(sr. no.15)
Mon,15June,2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6860 OF 2014

M/s. V.N. Parekh Securities
Pvt. Ltd

.....Petitioner

: V/S :
Mr. Hitesh A. Joshi

.....Respondent

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Mr. Mahesh Thorat, Advocate for the petitioner.

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Coram :- Smt. R.P. SondurBaldota, J.

15th JUNE, 2015.

P.C. :-

1). The petitioner, Company seeks to challenge two orders passed by the Labour Court by this petition. The first order is dated 9th September, 2009 by which it ex-parte allowed the Reference (IDA) No. 160 of 2007. The second order dated 21st November, 2013 by which it dismissed Misc. Application no.4 of 2010 filed by the petitioner. When it was brought to the notice of the learned Advocate for the petitioner that the challenge to the two orders could not have been combined in one petition, he has opted to restrict the petition to the challenge to the order dated 21st November, 2013 passed on the application for restoration.

2). The reference (IDA) No. 160 of 2007 was filed by the respondent, employee challenging his oral termination from service. He

alleged that, he had been working as an Office Assistant with the petitioner for about 16 years and his last drawn wages were about Rs.7,400/- per month. The petitioner had given him a break in service by taking its signature on blank papers. On 28th July, 2006 one of the Directors of the petitioner dismissed him from service with allegations of unauthorised absenteeism. Admittedly, notice of the reference had been served upon the petitioner. The proceedings before the Consolidation Officer had been attended to by the inhouse advocate of the petitioner. He was also responsible for attending to the reference proceedings. In addition, he had engaged a Counsel to appear alongwith him. When despite receipt of notice of reference, the petitioner did not attend to the reference proceedings for almost 2 years, the Labour Court heard the reference ex-parte, considered the evidence produced by the respondent and allowed the reference by directing the petitioner to reinstate him in service with full backwages.

3). On 22nd January, 2010 the petitioner filed application for setting aside the ex-parte order and for restoration of the reference proceedings under Rule 26(2) of the Industrial Relations Act, 1958. The only reason given by the petitioner in its application for setting aside the ex-parte Award was that, its inhouse advocate was busy during the period of June, 2009 to 20th September, 2009 due to matters pending in the Apex Court

and as such he could not coordinate with the Advocate engaged for in the reference proceedings.

4). Undisputedly, the occupancy of the inhouse advocate was for the petitioner's own matters pending in the Apex Court. Therefore, such pre-occupancy cannot be made into an excuse for non-attendance of the reference proceedings. In any case, the petitioner and its inhouse advocate were well aware of the reference proceedings and had not even filed a reply/written statement therein. Mr. Thorat, the learned Advocate appearing for the petitioner submits that, it is well established position of law that for the mistake of the Advocate, a litigant should not suffer. In the case on hand, it can hardly be said to be a case of litigant suffering for the mistakes of the advocate because the reasons set out in the application is absence of the inhouse advocate. This would mean absence of the petitioner itself. The petitioner had also contended in the application that, no proper notice of the reference was served upon it and if proper notice were to be given, it would have appeared in the reference proceedings. The Labour Court noted that the claim of improper notice made by the petitioner was not a correct claim to say the least. It was infact a false claim since notice had been properly served and the inhouse advocate of the petitioner had infact engaged another lawyer to attend to the reference proceedings.

5). Mr. Thorat. relies upon two decisions of the Apex Court in the case of (i) **J.K. Synthetics Ltd. Versus. Collector of Central Excise, reported in (1996) 6 Supreme Court Cases 92**, and (ii) **Anil Sood v. Presiding Officer, Labour Court-II, reported in 2001 II CLR page 18** in support of its submission that the ex-parte order should be set aside where sufficient cause is established to the satisfaction of the Tribunal. There can be no dispute with the proposition canvassed with the help of the decision. But in the facts of the case on hand, the Labour Court has clearly recorded its dissatisfaction as regards the cause shown. Also the petitioner has come with a false case that the notice served upon it, was not proper. In the circumstances, no interference with the impugned order is called for. The petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)