

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1598 OF 2014

Dena Bank

.....Petitioner

: V/S :

Mr. Sarjerao Khandagale

.....Respondent

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Mr. Vishal Talsania a/w. Ms. Radha Ved i/by. Sanjay Udeshi & Co.,
Advocate for the petitioner.

Mr. Nitin Kulkarni a/w. Mr. Avinash Belge, Advocate for the respondent.

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

24th JUNE, 2015.

P.C. :-

1). The petition as filed challenges the Award dated 30th December, 2009 passed by the Labour Court on Reference (IDA) No. 317 of 2005 and the order dated 17th April, 2012 passed by the same Court in Misc. Application No.11 of 2012 for setting aside the Award. On 17th June, 2015 when it was brought to the notice of Mr. Talsania, the learned Advocate appearing for the petitioner, that the two orders could not have been challenged in the same petition, Mr. Talsania, made a statement that the petitioner restricts the petition to the challenge to the order

dated 17th April, 2012 passed on Misc. Application No.11 of 2012. The petition is accordingly heard for that challenge.

2). In its application for setting aside the Award, the petitioner claimed that after receiving the notice of the reference proceedings, the appearance of the advocate was entered to contest the reference. The learned Advocate filed written statement on 25th August, 2008. However, he did not remain present thereafter and consequently the Award came to be decided ex-parte against the petitioner. It is submitted that since the petitioner had already taken appropriate step of engaging an advocate, it should not be made to suffer for the negligence on the part of the Advocate engaged.

3). Perusal of the rojnama shows that, after 25th August, 2008 on none of the dates, the petitioner and its advocate were present. On 11th September, 2008 the issues in the reference were settled and the matter was adjourned for evidence. The affidavit of examination-in-chief of the respondent was filed on 19th September, 2009 and the reference was adjourned for cross-examination by the petitioner. Despite grant of opportunity, when the petitioner did not cross-examine the witness, the Labour Court directed that the evidence of the witness be closed. Thereafter, on 5th November, 2009 the respondent filed praceipe of closure of his evidence and the reference was adjourned to

18th November, 2009 for the evidence of the petitioner. On the next date, when again the petitioner was absent, it was adjourned for arguments. The reference appeared on the board for arguments on three occasions before the ex-parte Award came to be passed. Six months thereafter i.e. on 25th June, 2010 the petitioner filed application for setting aside the ex-parte award.

4). The Labour Court, by its order dated 17th April, 2012 noted the utter negligence on the part of the petitioner and disbelieved its claim that it had engaged the services of Advocate Khandekar in the reference. There is undisputedly, no appearance filed by Advocate Khandekar in the reference proceedings. Admittedly, Advocate Khandekar had been representing the petitioner in several other references pending in the other Courts. The Court, has also noted that Advocate Mr. Malunjkar and Advocate Patwardhan had filed appearance on behalf of the petitioner in the reference. Therefore, the claim made by the petitioner that Advocate Khandekar had been appearing in the Reference, was incorrect to say the least. The written statement filed by the Junior Clerk of the petitioner was identified by Advocate Khandekar. Thereafter, Advocate Malunjkar had filed vakalatnama in the reference. The application does not give any explanation for absence of Advocate Malunjkar and Advocate Patwardhan. The Labour

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Court, therefore disbelieved the entire claim made by the petitioner in the application and dismissed the same. In my opinion, there is no infirmity whatsoever in the impugned order. The finding therein is supported by the material on record. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)