

ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 320 OF 2014

IN

WRIT PETITION NO. 1913 OF 2003

Fancy Corporation Limited .. Applicant

In the matter between

Fancy Corporation Limited .. Petitioner

Vs.

Girdhari Mangru Yadav .. Respondent

Mr.P.M.Palshikar, Advocate for the Applicant/Petitioner.

Mr.R.R.Gaur, Advocate for Respondent.

CORAM : R.G.KETKAR, J.

DATE : 06th February, 2015

P.C. :

. Heard Mr.P.M.Palshikar, learned Counsel for the petitioner and Mr.R.R. Gaur, learned Counsel for the respondent at length.

2. By this motion, the petitioner has prayed for condoning the delay of 890 days in taking out the motion for withdrawal of the amount deposited in this Court as also seeking permission to withdraw the amount of Rs.1,17,671/- along with interest as per the judgment and order dated 29/03/2007 passed by this Court in Writ Petition No. 1913 of 2003.

3. Mr.Palshikar submitted that the petitioner herein has instituted Writ Petition No. 1913 of 2003 challenging the judgment

and order dated 25/04/1995 passed by the Labour Court in Application (BIR) No. 740 of 1984 and the common order dated 07/01/2003 passed by the Industrial Court in Appeal (IC) No. 69 of 1995 as also for confirmation of order of dismissal on 14/05/1984 inflicted upon the respondent. The petition was finally heard on 29/03/2007 and was allowed. Rule was made absolute in terms of prayer clause (b) subject to the entitlement of respondent to receive Rs.50,000/- by way of ex-gratia payment from the petitioner from and out of Rs.1,17,671/- deposited by it under the order of the Court. It was further observed that petitioner shall be entitled to withdraw balance amount lying with the Prothonotary and Senior Master of this Court together with interest thereon subject to deduction of Rs.50,000/-. He submitted that appeal preferred against order dated 29/03/2007 was also dismissed.

4. Mr.Palshikar submitted that during the pendency of this petition, petitioner has filed purshis at Exhibit 'A' signifying no objection for the respondent withdrawing Rs.50,000/- even in the event of petitioner succeeding in the petition. The petitioner has prayed for withdrawal of the amount deposited by it subject to deduction of Rs.50,000/-.

5. On the other hand, Mr.Gaur submitted that the motion itself is not maintainable as the respondent had withdrawn amount of Rs.50,000/-. Since the petitioner has prayed for withdrawal of

Rs.1,17,671/- and not Rs.67,671/- (Rs.1,17,671 – Rs.50,000/-), the motion is liable to be dismissed. In addition, he submitted that the claim made in the motion is barred as the motion is taken out beyond 89 days. He invited my attention to the affidavit of respondent and submitted that for these reasons, motion is liable to be dismissed.

6. I have considered the rival submissions made by the learned Counsel for the parties. I have also perused the material on record. As indicated earlier, the petition filed by the petitioner was allowed on 29/03/2007. Paragraph 34 of the order reads as under :

“In the result, petition is allowed. Rule is made absolute in terms of prayer clause (b), however, subject to the entitlement of the respondent to receive Rs.50,000/- by way of ex-gratia payment from the petitioner-employer from and out of the amount of Rs.1,17,671/- deposited by the petitioner under the order of this Court. The petitioner shall be entitled to withdraw the balance amount lying with the Prothonotary and Senior Master of this Court with interest earned thereon subject to deduction of Rs.50,000/- as indicated herein. In the event, the respondent does not withdraw this amount of Rs.50,000/- within a period of one month from the date of pronouncement of this order, the Prothonotary and Sr.Master would be free to invest Rs.50,000/- with any Nationalized Bank for a period of 37 months and should hold the same in deposit till expiry of the period of investment. However, if the respondent does not withdraw or apply to withdraw this amount, during this period of 37 months, then it would be open for the petitioner-employer to claim this amount with accrued interest thereon since the respondent would forfeit his right to claim Rs.50,000/- after expiry of the said period of 37 months.”

The appeal preferred against this order was dismissed on 26/06/2008 as the delay in filing appeal was not condoned.

7. Mr.Palshikar submitted that time limit was given to the respondent to withdraw the amount of Rs.50,000/-. The respondent was directed to withdraw the amount within a period of 37 months, failing which his right to claim Rs.50,000/- was forfeited. He submitted that no time limit was prescribed for the petitioner for withdrawing the remaining amount. Perusal of the paragraph 34 extracted hereinabove shows that respondent was permitted to withdraw amount of Rs.50,000/- within a period of 37 months failing which it was open to the petitioner to claim that amount together with accrued interest. However, no time limit was prescribed for the petitioner for withdrawal of the remaining amount. That apart Mr.Gaur did not substantiate his submission that claim in motion is time barred. No provision to support that submission was pointed out. Even otherwise, I do not find any merit in this submission.

8. Having regard to the fact that the respondent has withdrawn amount of Rs.50,000/- along with accrued interest. in my opinion, the petitioner has made out a case for granting reliefs. Hence, the delay of 890 days in filing the motion is condoned. The petitioner is permitted to withdraw Rs.67,671/- along with accrued interest, if any, as per order dated 29/03/2007 passed in Writ Petition No.1913 of 2003. Motion is made absolute and is disposed of accordingly.

(R.G.KETKAR, J.)