

Mr. Sunil K. Kharwal for Petitioner.
Mr. H. Kumar Vaidyanathan for Respondent.

P.C. :

Heard Mr. Kharwal, learned Counsel for petitioner and Mr. Vaidyanathan, learned Counsel for respondent at length. Rule. Mr. Vaidyanathan waives service for respondent. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 226 of the Constitution of India, the petitioner has challenged the judgment and order dated 21.08.2014 passed by the learned Presiding Officer, Tenth Labour Court, Mumbai in Condonation of Delay Application (IDA) No.1 of 2012 in Reference (IDA) No.185 of 2010. By that order, the Labour Court rejected the application made by the petitioner for condonation of delay in filing the application for setting aside the ex-parte award dated 07.01.2011 passed in Reference and for restoration of the Reference as per Section 11 of the Industrial Disputes Act, 1947 read with Rule 26 of the Industrial Disputes (Bombay) Rules, 1957.

3. In support of this Petition, Mr. Kharwal invited my attention to the Miscellaneous Restoration Application filed by the petitioner on 10.02.2012 and in particular paragraph 11 thereof. In paragraph 11, the

petitioner contended that the establishment had permanently and irrevocably closed their operation of business with effect from 30.09.2008 and the premises wherein the said business was being conducted was given on a rental basis since 02.07.2007 which fact is clearly reflected from the Leave and Licence Agreement entered between the petitioner and the licensee. The petitioner also craved to refer and rely upon the copy of the said Leave and Licence Agreement as and when produced. Mr. Kharwal invited my attention to the registered Leave and Licence Agreements dated 02.07.2007. He also invited my attention to paragraphs 5 and 13 of the impugned order and submitted that though this contention was specifically raised before the Labour Court, the same is not dealt with in the impugned order.

4. Realizing this position, Mr. Vaidyanathan submitted that the impugned order may be set aside and the delay in filing the application for restoration may be condoned subject to payment of costs. He further submitted that the Labour Court may be directed to dispose of the application for restoration in a time-bound manner.

5. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. The impugned judgment and order dated 21.08.2014 passed by the Labour Court is quashed and set aside and the Condonation of Delay Application (IDA) No.1 of 2012 is allowed subject to petitioner paying costs of Rs.15,000/- to the respondent within 4 weeks from today. Payment of costs is condition precedent;
- b. Miscellaneous Restoration Application shall be numbered and disposed of as expeditiously as possible and in any case, within 4 months from today;
- c. In the meantime, no coercive steps shall be taken in

pursuance of the award dated 07.01.2011;

d. All the contentions of the parties on merits are expressly kept open.

6. Rule is made absolute in the aforesaid terms. R & P be sent back forthwith. Writ to go down forthwith.

(R. G. KETKAR, J.)

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