

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4743 OF 1995

Madhukar Suryabhan Borde
Age: 40 Yrs., occu. Business,
R/o Ward No.1, Gondhavani,
Tq. Shrirampur, Dist. Ahmednagar. = **PETITIONER**

VERSUS

- 1) The State of Maharashtra
- 2) The Tahsildar, Tehsil office,
Shrirampur, Dist. Ahmednagar.
- 3) Latabai Baban Warte,
Age: Major, occu. Nil.
- 4) Sukhadeo Baban Warte,
Age: 14 Yrs., occu. Nil.
- 5) Dilip Baban Warte,
Age: 11 Yrs., occu. Nil.

Resp.Nos. 4 and 5 are minors and
under guardianship of their
real mother, Resp.No.3 – Latabai
Baban Warte.

Resp.Nos. 3 to 5 are r/o C/o
Malanbai Ganpat Warte, Rama Nagar,
Sangamner Road, Octroi Naka No.4,
Ward No.7, Shrirampur,
District Ahmednagar. = **RESPONDENTS**

Mr.AS Bajaj, Advocate for Petitioner;
Mr. SW Mundhe, AGP for Resp.Nos. 1 & 2;
None for respondent Nos. 3 to 5 though served.

CORAM : P.R.BORA, J.

DATE : 7th July, 2016.

ORAL JUDGMENT:

1) Heard. The present petition is filed taking exception to the Certificate of recovery issued by the Judge, Labour Court and Commissioner of Workmen's Compensation, Ahmednagar on 16.4.1994 and the Demand Notice issued by Tahsildar, Shrirampur, Dist.Ahmednagar, i.e. Respondent No.2, bearing No.555/1995 dated 21.8.1995 on the basis of the aforesaid Certificate of recovery.

2) Shri Bajaj, learned Counsel appearing for the petitioner, brought to my notice that in the Application (WC) No.47/1986, the present petitioner was directed to pay to the respondents the compensation amounting to Rs.56,154/- including the amount of penalty within a month from the date of the said order, i.e. 27th December, 1990.

. The learned Counsel further brought to my notice that in the said order, it was further provided that in case of failure in payment of

the aforesaid amount by the petitioner, the applicant therein would be entitled to recover the amount of compensation with 18% interest on the said amount.

. Shri Bajaj further submitted that admittedly, a default was committed by the present petitioner in depositing the amount of compensation. In the circumstances, the recovery certificate was issued by the Workmen's Compensation Commissioner on 11th May, 1993. The learned Counsel further brought to my notice that on the basis of the recovery certificate, recovery proceedings were initiated by Tahsildar, Shrirampur and demand notice dated 31.8.1995 was issued by Tahsildar, Shrirampur, calling upon the present petitioner to pay amount of Rs.69,089=49 ps. The learned Counsel pointed out that while calculating the amount, the Tahsildar had calculated the interest @ 18% from 4.12.1986. The learned Counsel submitted that in view of the order passed in Application (WC) No.47/1986 on 27th December, 1990, it was not stipulated or no

such direction was issued that the claimants will be entitled for the interest from the date of filing of the application.

. The learned Counsel further submitted that on the contrary, while depositing the amount of compensation, the amount of penalty was also included in the total amount of compensation and the further direction was issued that in case the amount so awarded by the Workmen's Compensation Commissioner, if not paid within a period of one month from the date of passing of such order, the claimant will be entitled for 18% interest on the said amount. The learned Counsel submitted that in such circumstances, even if the default was committed by the petitioner, the interest was payable to the original applicants from 26.1.1991, i.e. from the date of order; whereas in the recovery certificate interest @ 18% has been calculated w.e.f. 4.12.1986.

. The learned Counsel further brought to my notice that while admitting the present petition, the petitioner was directed to deposit

a sum of Rs.25,269=20 ps, which according to the petitioner was the due amount of interest payable on the amount of compensation from the date of decision in the WC application. The learned Counsel further submitted that accordingly the said amount was deposited and the same was permitted to be withdrawn by the claimants.

3) Learned Counsel appearing for the respondent is absent. However, I have gone through the order passed in Application (WC) No.47/1986 and has also perused the further order on the basis of which, the recovery certificate was issued and the execution was proceeded with by Tahsildar, Shrirampur. On perusal of these documents, it is apparently revealed that the interest has been wrongly calculated w.e.f. 4.12.1986 when the said amount ought to have been calculated w.e.f. 26.1.1991, as has been directed in the order passed by the Workmen's Compensation Commissioner in Application (WC) No.47/1986. The calculations so made and the recovery certificate

so issued on the basis of such calculations, cannot be sustained. As such, the Certificate of recovery issued on 16.4.1994 and the Demand Notice issued on the basis of said Certificate on 31.8.1995, are liable to be quashed and set aside and are accordingly quashed and set aside.

4) Rule is made absolute in the aforesaid terms.

sd/-
(P.R.BORA,J.)

bdv/