

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8683 OF 2015

M/s Raviraj Printers
Through its Authorised Signatory,
Shri Janardhan Kisanrao Pawar,
Age 66 Years, Occupation Nil
R/o Plot No.9, Banjara Colony,
Aurangabad.

..Petitioner

Versus

Dilip Kashinath Kathar
Age 37 years, Occ. Nil
R/o Kathar Niwas,
Khokadpura, Aurangabad.

..Respondent

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Advocate for Petitioner : Shri Vidwauns Sagar S.
Advocate for Respondent : Shri Pande Shashikant R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 13, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. While issuing notice to the respondent on 26.8.2015, this Court had recorded the submissions of the petitioner and had directed him to deposit

Rs.3,50,000/- in this Court as under:-

“6. The compensation amount awarded by the Labour Court is around Rs.7,00,000/- (approximately). As such, the petitioner shall deposit an amount of Rs.3,50,000/- in this Court on or before 22/09/2015. On condition of deposit, the respondent is restrained from seeking recovery of the compensation amount as per the Recovery Certificate dated 02/07/2015 issued by the Labour Court in Misc. Recovery No.7/2014, till the next date of hearing in this matter.

7. In the event, the amount is not deposited as directed above, the ad-interim protection granted to the petitioner, shall stand vacated without reference to the Court.”

5. On 22.9.2015, the amount as directed was deposited in his Court and hence ad-interim protection was continued.

6. I have considered the strenuous submissions of the learned Advocates for the petitioner as well as the respondent / employee. Since I find that the issue involved was not properly dealt with by the Labour Court and the matter needs to be remanded, I am not adverting to their entire submissions.

7. It is not disputed that the judgment of the Labour Court, dated 15.10.2013 in Application (WC) No.21 of 2012 has been delivered in the absence of the participation of the petitioner.

8. The petitioner had filed a Misc. Application No.33 of 2014, praying to the Labour Court to set aside the ex-parte judgment dated 15.10.2013. The said application was filed on 28.10.2013 purportedly, after the petitioner received a notice for recovery of amount.

9. The contention of the petitioner is that the judgment dated 15.10.2013 is an ex-parte judgment. Despite an Advocate having been appointed on its behalf, he failed to conduct the proceedings, failed to file the written statement and the proceedings resulted in the judgment dated 15.10.2013 in the absence of the participation of the petitioner.

10. Further contention is that when the stage in the Misc. Application was for the petitioner to lead evidence, in support of its application for recalling the judgment dated 15.10.2013, the Labour Court has passed an order on the insistence of the respondent and has rejected the Misc. Application, concluding that it is not maintainable. Grievance is that the Labour Court concluded that the judgment dated 15.10.2013 is not an ex-parte judgment, but is a judgment passed in the absence of the written statement of the petitioner.

11. Shri Vidwauns, learned Advocate for the petitioner submits that the above contention of the Labour Court is mis-conceived in the light of the certified copy of the order dated 2.8.2012, shown to the Court. Copy of the certified order dated 2.8.2012 is taken on record and marked as Exhibit "X".

12. He, therefore, submits that the Labour Court has mis-construed that there is no order to proceed ex parte and hence the Misc. Application filed by the petitioner would be untenable in law. He relies upon Order IX Rule 6 and Order IX Rule 13 of the Civil Procedure Code ("CPC") read with Rule 27 of the Workmens' Compensation Rules, 1924 ("1924 Rules").

13. Shri Pande, learned Advocate submits that the Labour Court has rightly concluded that the judgment dated 15.10.2013 is not an ex-parte judgment. Order IX Rules 6 and 13, would therefore, be of no assistance to the petitioner. Since a written statement was not filed and the court proceeded without the written statement of the petitioner, Rule 27 of the 1924 Rules would dis-entitle the petitioner from filing a Misc. Application before the same Court and therefore, would mandate the petitioner to file a first appeal in this Court after depositing the entire amount.

14. Shri Pande has further canvassed that the reasons set out in the Misc. Application by the petitioner are false and mis-leading. The petitioner is financially strong and his sons and daughters are equally financially strong. He, therefore, submits that the petitioner does not deserve any sympathy and this petition deserves to be dismissed.

15. I find from the impugned order that the stage before the Labour Court was for enabling the petitioner to lead oral and documentary evidence in support of its Misc. Application. A detailed reply at Exhibit U/3

was also filed by the respondent / employee and based on the same, the Labour Court had proceeded to reach the stage of recording oral and documentary evidence. At that juncture, application Exhibit U/4 was moved by the respondent claiming that the Misc. Application Exhibit C/1 was not maintainable.

16. In my view, when the matter was already posted for recording of oral evidence, notwithstanding that the respondent filed an application Exhibit U/4, the trial Court could have proceeded to record the oral and documentary evidence of both the sides and could have dealt with the matter on its own merits.

17. Rule 41 of the 1924 Rules, makes certain provisions of the CPC applicable to the proceedings before the Compensation Commissioner, which is the Labour Court. Order IX finds place in Rule 41.

18. Exhibit "X" is an order passed by the Labour Court on the claim petition Exhibit U/1 filed by the respondent, which was registered as Application (WC) No. 21 of 2012. Exhibit "X" is an order dated 2.8.2012, vide which the Labour Court has passed the order, "Hence matter proceed to exparte against the respondent."

19. The Labour Court while passing the impugned order, has assumed in paragraph No.12 that the matter had proceeded without the written statement of the petitioner. I do not find that the Labour Court has

considered the order dated 2.8.2012 below Exhibit U/1 in Application (WC) No.21 of 2012. The said order is apparently an order directing the proceedings to proceed exparte against the petitioner.

20. Order IX Rule 6 read with Rule 13 would, therefore, entitle the petitioner to seek an order from the Labour Court on its Misc. Application.

21. In the light of the above, I find that the impugned order has led to taking away the right of the petitioner to prefer an application under Order IX of the CPC, thereby seeking recalling of the exparte judgment dated 15.10.2013. The Labour Court has passed the order dated 2.8.2012, by which the matter had proceeded exparte.

22. As such, this petition is partly allowed. The impugned order dated 7.4.2015, delivered by the Labour Court below applications Exhibit C/1 and U/4 is quashed and set aside. Misc. Application No.33 of 2014 is remitted back to the Labour Court for permitting the litigating sides to lead oral and documentary evidence in support of the applications Exhibits C/1, U/3 and U/4, which shall be decided on their own merits.

23. Both the litigating sides shall appear before the Labour Court on 29.4.2016. Formal notices need not be issued by the Labour Court. Both the sides shall cooperate with the Labour Court, so as to enable the Labour Court to decide the Misc. Application No.33 of 2014 as expeditiously as possible and preferably within a period of four months from the date of

appearance before the Labour Court.

24. The amount of Rs. 3,50,000/- deposited in this Court by the petitioner, along with accrued interest, shall be transmitted to the Labour Court forthwith. The respondent is permitted to withdraw an amount of Rs.25,000/- without any condition. The rest of the amount shall be invested in a Nationalized Bank in a fixed deposit

25. In the event, the respondent succeeds before the Labour Court, the respondent shall not be permitted to withdraw the remainder amount during the Appeal period, pursuant to the judgment of the Labour Court.

26. Needless to state, the Labour Court shall decide the Misc. Application, considering all the contentions of the litigating sides and on its own merits, taking into account Rules 27 and 44 of the Workmens' Compensation Rules, 1924 and Order IX of the Civil Procedure Code, 1908.

27. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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