

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.769 OF 2012

Baijnath Harijan : Petitioner.
versus
M/s. Build India Construction System & ors. : Respondents.

Mr. L. H. Patil for the Petitioner.
Mr. Punit B Anand for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 18th October 2016

P.C.

1 The order dated 05/02/2011 passed by the Commissioner for Workmen's Compensation, Mumbai rejecting the Application for execution of the order dated 18/01/1996 passed by the Commissioner for Workmen's Compensation is taken exception to by way of the above Petition.

2 The said Application has been rejected on the ground that the order in question of which execution is sought i.e. the order dated 18/01/1996 passed by the Commissioner for Workmen's Compensation is not in existence.

3 The Petitioner herein had filed an Application under the Workmen's Compensation Act being Application (WCA) No.348/C-54 of 1988 for claiming compensation on account of the personal injury suffered by him in the accident arising out of and in due course of employment. Suffice it would

be to state that the said Application filed by the Petitioner came to be allowed by the Commissioner for Workmen's Compensation & Judge of the 12th Labour Court, Bombay by his order dated 18/01/1996. The operative part of the said order reads thus :-

“The application is partly allowed.

The opponent No.2 who is the principal employee is hereby directed to deposit the compensation amount of Rs.1,02,975/- with interest at the rate of 6% per annum from 7.12.87 till actual payment with penalty of Rs.51,487.50.

The opponent No.2 may recover the said amount from the opponent No.1.

In the circumstances no order as to costs.”

4 The Union of India which was the Respondent No.2 ;in the said Application filed First Appeal No.1111 of 2001 in this Court challenging the said order dated 18/01/1996. The said First Appeal came to be allowed by a learned Single Judge of this Court (R.M.S. Khandeparakar,J) as His Lordship then was by the judgment and order dated 31/10/2002 and resultantly the order dated 18/01/1996 passed by the Commissioner for Workmen's Compensation came to be set aside. The said judgment and order of a learned Single Judge dated 31/10/2002 was challenged by the Petitioner by filing SLP in the Apex Court. The Apex Court by its order dated 07/01/2004 dismissed the SLP. It seems, prior thereto the Union of India had deposited the amount

awarded pursuant to the order dated 18/01/1996 passed by the Commissioner for Workmen's Compensation. The Petitioner herein who was the Respondent in the First Appeal it seems had filed Civil Application being No.242 of 2002. A learned Single Judge of this Court by order dated 15/07/2002 had partly allowed the said Application and permitted the Petitioner herein who was the Respondent No.1 in the said Appeal to withdraw 50% of the amount deposited by the Union of India. The Petitioner accordingly has withdrawn 50% of the amount. After the First Appeal filed by the Union of India came to be allowed and disposed of, the Petitioner herein it seems filed an Application for execution i.e. for recovery under the said order dated 18/01/1996. As indicated herein above, the Commissioner for Workmen's Compensation has by the impugned order dated 05/02/2011 rejected the said Application on the ground that the order on the basis of which the Application was filed i.e. the order dated 18/01/1996 being already set aside, there was no question of recovering any amount.

5 The learned counsel appearing on behalf of the Petitioner Shri L H Patil endeavoured to contend that though the Appeal filed by the Union of India has been allowed and the order dated 18/01/1996 being set aside, the same is only against the Union of India, and therefore, the recovery could still be made against the Respondent No.1.

6 In my view, the said contention cannot be accepted in the light of the directions as contained in the operative part of the said order dated 18/01/1996 which have already been extracted herein above and also considering the fact that the said order dated 18/01/1996 has been set aside in its entirety in the First Appeal filed by the Union of India. There is therefore no order in existence on the basis of which recovery could be made against the Respondent No.1 herein. The impugned order therefore cannot be faulted with. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]