

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10105 OF 2016**

1 M/s. Sayonara Creations	)	
2 Mr. Suresh Ganeshmal Jain	)	
3 Mr. Dinesh Tejraj Jain	)	
Dashrath Patil Compound	)	
H. No.1630/3, 1630/1, 1630/4	)	
Babla Compound, Kalyan Bhiwandi	)	
Road, Bhiwandi, Dist Thane	)	..Petitioners

Vs.

Mr. Ranjeet Premanand Pathak	)	
C/o Bhiwandi Kamgar Sangh	)	
238, Heera Complex, Chandan Baug,	)	
Bharat Colony, Kamatghar, Bhiwandi	)	
Dist Thane	)	..Respondent

Mr. Rahul Oak for the Petitioners
Mr. A. S. Rao for the Respondent

CORAM : R. M. SAVANT, J.
DATE : 28th SEPTEMBER, 2016

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 4-8-2016 passed by the Learned Judge Fourth Labour Court, Thane, by which order, the application being M.A. (ULP) No.5 of 2015 came to be rejected.

3 It is not necessary to burden this order with unnecessary details having regard to the nature of final directions to be issued. Suffice it would be to state that the Reference in respect of the termination of the services of the Respondent herein was referred for adjudication to the Labour Court Thane and was numbered as Reference IDA No.36 of 2007. The Respondent herein filed his Written Statement on 6-11-2009 through his Advocate. The reference was thereafter posted for hearing from time to time on which dates the Advocate appearing for the Petitioners had remained present except for a few dates. The Advocate for the Petitioner intermittently remained present up to 16-12-14, however thereafter did not remain present till the date when the Award was passed on 17-2-2015. It seems that though the Advocate had remain present, reference was required to be proceeded exparte as no steps were taken to lead evidence and even arguments were not advanced on behalf of the Petitioners. The Award was therefore passed without there being any evidence led on behalf of the Petitioners as also any arguments being advanced on behalf of the Petitioners and without the witness of the Respondent being cross-examined. The Respondent received the Award from the Commissioner of Labour and on receipt of the Award the Petitioner realised that the Reference was answered in favour of the Respondent workman. This resulted in the Petitioners filing MA(ULP) No.5 of 2015 for setting aside the Award on the ground that it was exparte. The reason put forth in the application was

that the Petitioners were informed by their Advocate that it was not necessary to remain present and that he would take care of the Reference. It is the case of the Petitioners that believing the said statement, the representative of the Petitioners had not remained present until 17-2-2015. The Petitioners accordingly sought setting aside of the said Award. The said application was replied to on behalf of the Respondent. It was stated in the reply that the Applicants i.e. the Petitioners herein were aware of the proceedings as it had engaged two Advocates one Mr. Dalish Bajaj and Mr. Atul Shelke. The said Advocates have also filed Written Statement and therefore it cannot be said that the Award has been passed exparte.

4 The said application being MA (ULP) No.5 of 2015 came to be considered by the Learned Judge of the Fourth Labour Court Thane who by the impugned order dated 4-8-2016 has rejected the same. The rejection is principally on the ground that the representatives of the Petitioners are businessmen and they ought to be aware of the legal consequences of not remaining present in the proceedings. The Learned Judge has also held that it was incumbent upon the Petitioners to make inquiries with their Advocates as regards the status of the proceedings. Since the Petitioners have not been able to satisfy the court on the aforesaid aspects, the cause shown by the Petitioners cannot be said to be sufficient for setting aside the exparte Award on the ground of non appearance of the Advocate for the Petitioners on the said day.

5 Heard the Learned Counsel for the parties. The Learned Counsel for the parties would urge contention for and against the application be allowed and the reference being restored to file.

6 In my view, case for setting aside the Award dated 4-8-2016 passed by the Learned Judge Fourth Labour Court Thane is made out. As indicated above, the Written Statement was filed on behalf of the Petitioners in the year 2009 and thereafter the Advocate engaged by the Petitioners has appeared in the reference on most of the dates except a few. Significantly it appears that on the dates when the evidence was being recorded or arguments were to be advanced, no appearance was put up on behalf of the Petitioners resulting in the Reference being decided ex parte. It is well settled by the judgments of the Apex Court that a party should not be made to suffer on account of the acts of its Advocate. A final indulgence is therefore required to be shown to the Petitioners so that the Reference is adjudicated on merits. The same would obviously be on the pains of imposing costs. The impugned order dated 4-8-2016 is accordingly set aside, resultantly the application MA(ULP) No.5 of 2015 would stand allowed. The consequences of the same would be that the Reference in question would stand restored to file and would be dealt with denovo by the Learned Judge Fourth Labour Court, Thane by giving proper opportunity to the parties.

7 In the facts and circumstances of the case the Petitioners to pay costs of Rs.25,000/- to the Respondent within 8 weeks from date. The payment of the said costs is a condition precedent. If the costs are not paid as directed by the instant order, then the benefit of this order would not enure to the Petitioners and resultantly the Petition would be deemed to have been dismissed and the Award would then stand revived. If the costs are paid then the parties to appear before the concerned Judge of the Fourth Labour Court on 30-11-2016 who would then proceed to adjudicate the Reference in accordance with law.

8 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]