

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1039 OF 2016**

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|----|---------------------------------|---------------------|
| 1] | M/S. SUNVIM EXPORTS |] |
| | DC 7211/12/13, |] |
| | Bharat Diamond Bourse, |] |
| | Bandra Kurla Complex |] |
| | Bandra (East), Mumbai – 400 051 |] |
| | |] |
| 2] | MR.VIMALCHAND HIRAWAT |] |
| | DC 7211/12/13, |] |
| | Bharat Diamond Bourse, |] |
| | Bandra Kurla Complex |] |
| | Bandra (East), Mumbai – 400 051 |] |
| | |] |
| 3] | MR.SUNIT VIMALCHAND HIRAWAT |] |
| | DC 7211/12/13, |] |
| | Bharat Diamond Bourse, |] |
| | Bandra Kurla Complex |] |
| | Bandra (East), Mumbai – 400 051 |]..... Petitioners. |

Versus

SHRI KULDIP SAGAMAL KAMAT	]
Sagar Niwas Nagar,	]
B/36, Balganga, Matangali	]
Walkeshwar Road,	]
Mumbai – 400 011	]..... Respondent.

Mr. S C Naidu a/w Mr. Aniket Poojari i/by C R Naidu & Co. for the Petitioners.

Mr. V J Amberkar a/w Mr. J N Tiwari for the Respondent.

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

ORAL JUDGMENT :-

1 Rule, considering the challenge raised made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 11/06/2014 passed by the learned Judge, 8th Labour Court, Mumbai by which order the application being Misc. Application (IDA) No.4 of 2013 filed by the Petitioners for setting aside the ex-parte Award dated 06/03/2012 passed in Reference (IDA) No.20 of 2011 came to be rejected.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioners herein were the Respondents in the said Reference proceedings being Reference (IDA) No.20 of 2011 filed by the Respondent herein for involving the dispute as regards the claim of the Respondent herein for reinstatement with back-wages. There is no dispute about the fact that the said Reference was decided ex-parte as the Petitioners did not participate in the said proceedings. It seems that the Respondent herein invoked the provisions of the MRTU and PULP Act, 1971 and especially Item 9 of Schedule IV thereof seeking implementation of the said Award dated 06/03/2012. A notice of the said Complaint (ULP) No.61 of 2013 filed by the Respondent herein was received by the Petitioner on 14/03/2013. The receipt of the said notice resulted in the filing of the Application dated 15/03/2013 filed by the Petitioners for seeking a copy of the said Award with the Labour Court. The Petitioners were furnished with a copy of the said Award on 16/04/2013. After the receipt of the copy of the said Award the Petitioners

filed the instant Misc. Application (IDA) No.4 of 2013 for condonation of delay along with Misc. Restoration Application (IDA) No.-- of 2013. Since there was a delay in filing the said Misc. Restoration Application (IDA) No.-- of 2013, the Misc. Application (IDA) No.4 of 2013 seeking condonation of delay was taken up for hearing. Suffice it would be to state that the learned Judge of the 8th Labour Court, Mumbai has rejected the said Application by the impugned order dated 11/06/2014 and whilst adjudicating upon the said Application has applied the Rules which are applicable in the State of Punjab. In so far as the State of Maharashtra is concerned, the Industrial Disputes (Bombay) Rules are applicable and such an application has to be filed in terms of Rules 26 and 31-A of the Industrial Disputes (Bombay) Rules 1057. In so far as stipulation of time is concerned, the same is governed by Rule 26(2) of the Bombay Rules. The said Rule 26(2) provides that an application for setting aside an ex-parte Award has to be filed within 30 days of the receipt of a copy thereof. In so far as the Punjab Rules are concerned, the relevant Rules are Rules 22 and 24 of the said Rules. In so far as Rule 24 is concerned, it is provided therein that the provisions of the Code of Civil Procedure would apply meaning thereby that an application for setting aside an ex-parte Award would have to be filed under Order IX Rule 13 of the Code of Civil Procedure.

4 The learned Judge of the 8th Labour Court, Mumbai whilst dismissing the application has relied upon the judgment of the Apex Court

reported in 2005 SCC (L & S) 65 in Sangham Tape Company v/s. Hans Raj. The said judgment was delivered by the Apex Court in the context of the Punjab Rules which provide for an application to be filed before the expiry of the 30 days from the publication of the said Award. The Industrial Disputes (Bombay) Rules and the Punjab Rules had come up for a consideration before a learned Single Judge of this Court reported in 2006-II-LLJ 240 in the matter of Radhakrishna Mani Tripathi, Mumbai v/s. L.H. Patel and another.

Paragraph 35 of the said Report is material and is reproduced herein under :-

35. In case of Sangham Tape Company (cited supra), the Supreme Court was concerned with the case decided by the Labour Court, Punjab. The Punjab Rules are identical with that of the Central Rules. The copy of relevant provisions of the Punjab Rules is also placed on record. Rules 22 and 24 of the Punjab Rules are identical with that of Rules 22 and 24 of the Central Rules. As against this, Rule 26(2) and 31A(2) of the Bombay Rules are different and distinct unlike Central Rules.

A reading of the said paragraph 35 therefore discloses that Bombay Rules 26(2) and 31-A(2) are held to be different than the Central Rules which are in force in the State of Punjab. Hence the judgment of the Apex Court in Sangham Tape Company's case (supra) cannot be applied to the facts of the present case wherein the application ought to have been adjudicated on the basis of the Bombay Rules.

5 It is also required to be noted that on behalf of the Respondent

herein “No Objection” was given for condonation of delay but however payment of costs was sought. Notwithstanding the same, the learned Judge of the 8th Labour Court, Mumbai has rejected the application by applying the Punjab Rules and the judgment of the Apex Court rendered in the context of the Punjab Rules.

6 In that view of the matter, the impugned order dated 11/06/2014 would have to be quashed and set aside and is accordingly quashed and set aside. Since the learned counsel appearing for the Respondent Shri V J Amberkar has no objection to the delay being condoned albeit on payment of costs. The delay in filing the Misc. Restoration Application (IDA) No.-- of 2013 would therefore stand condoned. Hence it is not necessary to remand the Application (IDA) No.4 of 2013 back to the Labour Court Mumbai for a de-novo consideration. The Petitioners to pay costs of Rs.10,000/- to the Respondent within 4 weeks from date. The learned Judge of the 8th Labour Court, Mumbai would then proceed to hear the Misc. Restoration Application (IDA) No.-- of 2013 after 6 weeks from date. The learned Judge of the Labour Court, Mumbai is directed to register the said Misc. Restoration Application (IDA) No.-- of 2013 before the said date. It is made clear that in the event the costs are not paid to the Respondent as directed herein above, the benefit of the instant order would not enure to the Petitioners and then the above Writ Petition would be deemed to have been dismissed. The Misc. Restoration

Application (IDA) No.-- of 2013 to be decided latest by 31/01/2017. Since there is an ad-interim order operating thereby staying the execution of the Award dated 06/03/2012, the said ad-interim order would continue to operate for a period of 6 weeks from date, after which the Petitioners would be entitled to file an application before the Labour Court, Mumbai for continuation of the said stay. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]