

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6442 OF 2015

M/s Xylem Seeds Private Ltd. Hyderabad, Telangana State. Thr. Its authorised Signatory
Anshul Sharan.

-vs-

Savita wd/o Shivaji Darade and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. Khare, Advocate for petitioner.
Shri M. V. Mohokar, Advocate for respondent Nos.1,
3 and 4.

CORAM : A.S.CHANDURKAR, J.

DATE : AUGUST 12, 2016

Heard.

The petitioner is aggrieved by the order dated 16/04/2014 passed by the learned Commissioner under the Employees Compensation Act, 1923. By the said order, the delay in filing the claim for compensation at the instance of respondent Nos.1 to 4 has been condoned.

It is the case of the respondent Nos.1 to 4 that the husband of respondent No.1 met with an accident on 08/07/2005 during the course of employment. On that basis the petitioners issued a notice on 30/07/2007 under Section 10 of the said Act. Thereafter a claim for compensation came to be filed on 30/04/2008. As there was delay in filing the aforesaid claim for compensation, a

separate application for condonation of delay was moved. By the impugned order, the delay stands condoned.

Shri A. Khare, the learned counsel for the petitioner submitted that the claim was filed against one M/s Nandi Seeds Private Ltd. On 12/03/2010, name of the aforesaid company was changed to M/s Xylem Seeds Private Ltd. It is submitted that though the claim for compensation was filed after lapse of nine months and twenty two days, the learned Commissioner by observing that the delay was not deliberate, condoned the same. It was observed that the delay was only of nine months. He submitted that the petitioners were not joined as non-applicants in the said proceedings and therefore they had no opportunity to contest the same. He also submitted that though the said request been made by the petitioners by moving an application for recalling the earlier order, the said request had not been accepted. Hence the order condoning the delay was liable to be set aside.

Shri M. Mohokar, the learned counsel for the respondents supported the impugned order. According to him, the non-applicant Nos.1 and 2 in compensation proceedings were duly served but they did not contest the application of condonation of delay. The present petitioners on their own had moved an application for intervention and the same can be allowed. He submitted that as the delay has

been condoned, there was no reason whatsoever to again reopen the said aspect at the instance of the petitioners who were intervenors.

I have heard the respect counsel for the parties and perused the documents filed on record. The accident in question occurred on 08/07/2005. According to the respondents a notice dated 30/07/2007 came to be issued to the non-applicant Nos.1 and 2 in the said proceedings under Section 10 of the said Act. Thereafter the claim for compensation was filed on 30/04/2008. In this claim for compensation, the petitioners were not joined as non-applicants. As per the certificate of incorporation, the name of the petitioner No.1-company was changed in March 2010. It is therefore clear that when the claim petition was filed on 30/04/2008, it was rightly filed against the original non-applicant Nos.1 and 2. The petitioners came in the picture subsequently. It is also to be noted that the petitioners have already been permitted to intervene in the proceedings for determination of compensation. Hence at their instance the aspect of delay does not deserve to be reopened. It is also to be noted that the delay application was duly served on the original non-applicant Nos.1 and 2. The same was not contested by them. On that basis, the learned Commissioner proceeded to condone the delay. Merely because the delay of

nine months had been condoned while according to the petitioners, the delay was for the period of nine months and twenty days, the same would not make much difference.

In view of aforesaid, I am not inclined to interfere in the impugned order dated 15/04/2014. By observing that it is open for the petitioners to participate in the said proceedings and contest the same if found necessary, the writ petition is dismissed with no order as to costs.

JUDGE

-: C E R T I F I C A T E :-

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