

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITON Nos. 1324 OF 2011

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/claimants is directed against the order dated 14.02.2008 passed in WCMP No.25 of 2007 in

MP No.27 of 2006 in W.C.No.47 of 2003 passed by the learned Commissioner for Workmen's Compensation of Labour, Vijayawada filed for setting aside the order of dismissal for default dated 27.07.2007 passed in M.P.No.27 of 2006 in the above WC Case and restore the said miscellaneous petition to file.

2. I have heard the submissions of the learned counsel for the claimants/petitioners ("petitioners", for brevity). Though the second respondent is served, none appears. The first respondent, the employer, who is said to have remained *ex parte* in the proceedings before the Court below, is stated to be a not a necessary party.

3. I have perused the material record.

4. On the death of one Subrahmanyam, his wife and other legal heirs had filed the WC Case claiming compensation. That WC Case was dismissed for default. Therefore, they had filed M.P.No.27 of 2006 for restoration of the WC Case. Even that MP was dismissed for default on 27.07.2007. Therefore, they had filed the said WCMP.No.25 of 2007 for restoration of WP MP No.27 of 2006 after setting aside the dismissal order for default made on

27.07.2007. That application was dismissed, on merits, by the Court below. Therefore, the petitioners are before this Court.

5. The learned counsel for the petitioners would submit as follows:

The first petitioner is the widow of the deceased employee. She is not having any male assistance. Therefore, she could not appear before the Court below on 27.07.2007, to which date the MP No.27 of 2006 was posted. The counsel for the petitioners entrusted the matter to another counsel to represent the case as he was not in a position to attend the Court below on that day and as the two wheeler tyre got inflated. However, for non appearance of the first petitioner and her counsel WP MP No.27 of 2006 was dismissed for default. For the reasons stated, the Court below ought to have allowed the petition filed on the same day by the petitioners for restoration of MP No.27 of 2006. The Court below ought to have seen that the valuable rights in regard to claim for compensation are involved in the main case and hence, the court below ought not to have dismissed the application taking into consideration the previous absence, which lead to the dismissal of the WC Case.

6. I have bestowed my attention to the facts and submissions.

7. The fact which is of vital importance is that on the dismissal of WP MP No.27 of 2006 by the Court below on 27.07.2007, the petitioners got filed the restoration petition on the same day explaining the circumstances that are already stated supra. The only objection in the counter of the second respondent filed before the court below was that the explanation of the

Advocate that the matter was entrusted to another counsel for making a representation is not a sufficient ground. Taking into consideration the said contention, the Court below had dismissed the petition of the petitioners without considering the fact that the application was filed on the same day explaining the circumstances and seeking restoration.

8. In the well considered view of this Court, in matters of this nature where a compensation claim of the Legal Heirs of the deceased employee are involved, it is just and fair to give an opportunity to such claimants to have their cause decided on merits. The law is well settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. Viewed thus, this Court finds that the order impugned being unsustainable brooks interference.

9. Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside. Consequently, WCMP No.25 of 2007 is allowed. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

June 15, 2016
LMV