

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 2129 of 2006**

Maruti Automobiles (A Partnership Firm), through its : Partner
Anil Agrawal, Mahoba Bazar, G.E. Road, Raipur (Chhattisgarh).

---Petitioner**Versus**

1. Smt. Fhiran Bai, W/o. Shri Arun Manikpuri, R/o. Near Shiv Mandir Mahant Talab Kota, Raipur, Tehsil & District Raipur (Chhattisgarh).
2. Labour Court, Raipur (Chhattisgarh).

---Respondents

For petitioner : Mr. P. K. Bhaduri, Advocate.

For respondent : Mr. Sudeep Johri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****10.10.2017**

1. This writ petition is directed against the order dated 24.05.2005 by which the petitioner's application under Order 1 Rule 13 of the Code of Civil Procedure, 1908 for setting aside ex parte award, has been rejected by the Labour Court.

2. Mr. P.K. Bhaduri, learned counsel for the petitioner, would submit that court clerk of the Labour Court recorded presence of the petitioner's counsel wrongly and in fact after 15.11.2002, the Labour Court proceeded ex parte in most arbitrary manner on 15.11.2002, therefore impugned order is liable to be set aside.

3. Per contra, Mr. Sudeep Johri learned counsel for the respondent would support the impugned order.

4. I have heard learned counsel for the parties, considered their rival submissions and gone through the record with utmost circumspection.

5. It is not in dispute that the petitioner company was duly noticed before the Labour Court and after due notice, the petitioner company appeared through his counsel till 15.01.2003 and on that day, the case was fixed for 14.02.2003. The Labour Court proceeded ex parte on that date (14.02.2003) as none appeared on that date to defend the petitioner's company and ultimately, ex parte award was passed on 12.03.2003 and thereafter only on 29.10.2004, an application for setting aside ex parte award was made with a delay of 18 months, which has been rejected by the Labour Court finding that no sufficient cause has been shown.

6. The petitioner has challenged that court clerk has recorded presence of the petitioner's counsel wrongly and in fact after 15.11.2002, the Labour Court proceeded ex parte in most arbitrary manner.

7. In the matter of **State of Maharashtra v. Ramdas Shrinivas Nayak and another**¹ the Supreme Court has held that statement of fact regarding proceedings in Court such as admission or concession made by a party recorded in the judgment of a court is conclusive and not open to contradict and observed as under:-

¹ (1982) 2 SCC 463

“4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. “Judgments cannot be treated as mere counters in the game of litigation.”² We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error.³ That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

8. The petitioner did not make any application for correction/modification before the Labour Court that his counsel's

² Per Lord Atkinson in *Somasundaram Chetty v. Subramanian Chetty*, AIR 1926 PC 136

³ Per Lord Buckmaster in *Madhu Sudan Chowdhri v. Chandrabati Chowdhrair*, AIR 1917 PC 30

presence has wrongly been recorded but straightway filed an application under Order 9 Rule 13 CPC for setting aside the ex parte award.

9. The Labour Court has rightly concluded that the petitioner's counsel appeared before the court till 15.01.2003, but did not appear thereafter, hence he was proceeded ex parte. The Labour Court has also rightly concluded that the petitioner has failed to show sufficient cause for his non-appearance when the case was called up for hearing. I do not find any infirmity or illegality in the impugned order. The writ petition deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge