

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 2184 of 2004**

Balaji Structure India Pvt. Ltd., through its Proprietor Vishnu Agarwal, S/o Shri Bhagwan Das Agarwal, aged about 32 yers, R/o Choubey Colony, Raipur (C.G.)

---- **Petitioner****Versus**

1. Smt. Jayanti Bai, Wd/o late Jamunalal Patel;
2. Ku. Gunja, D/o late Jamunalal Patel;
3. Hemchand, S/o late Jamunalal Patel;
4. Hemant, S/o late Jamunalal Patel;

Respondents No. 2 to 4, all minors, represented through their natural guardian (mother) Smt. Jayanti Bai, Wd/o late Jamunalal Patel, R/o Kumhari (Raipur Chouraha), P.O. Kumhari, Police Station, Kumhari, District Durg (C.G.)

5. Commissioner for Workman Compension, Labour Court, Raipur (CG)

---- **Respondents**

For Petitioner : Mr. Vinod Deshmukh, Advocate

For Respondents No. 1 to 4 : Mr. H.B. Agrawal, Senior Advocate with
Mrs. Itu Rani Mukherjee, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**12/10/2017**

Heard.

(1) Instant writ petition has been filed by the petitioner challenging the order dated 25.06.2004 passed by respondent No. 5-Commissioner for Workman Compensation – cum- Labour Court, Raipur by which petitioner's application filed under Order 9 Rule 13 of the Code of Civil

Procedure (for short "CPC") has been rejected.

(2) Learned counsel for the petitioner would submit that though the petitioner was not served with the notice in the proceedings before the Commissioner as he was proceeded *ex parte* before that Court and *ex parte* award has been passed against him. The respondent No. 5-Commissioner has rejected his application filed under Order 9 Rule 13 CPC, which is liable to be set aside.

(3) Per contra, counsel for the respondents No. 1 to 4 would support the order impugned.

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

(5) Learned Commissioner has clearly recorded a finding in paragraph five of its order that the petitioner was not served, he was only informed by the Postman to receive the registered envelope and accepting the statement of Post Man, the Commissioner proceeded *ex parte* against the petitioner stating that he has been served , which is clearly impermissible in law, as such, no notice was served to the petitioner to appear in the proceedings before the Commissioner for contesting the case on a particular date and, therefore, the Commissioner could not have proceeded *ex parte* against the petitioner and, thus, the impugned order is liable to be and is hereby set aside and consequently the *ex parte* award is also set aside. The matter is restored to the file of Commissioner, for Workmen Compensation for hearing and disposal in accordance with law. Ordered accordingly.

(6) The parties are directed to appear before the Commissioner for

Workman Compensation on **02.11.2017**. No notice is required to be issued to the parties concerned. The petitioner is at liberty to file his written statement and the same shall be considered and decided by the Commissioner, Workman Compensation on or before 8th January, 2018 while deciding the matter afresh after affording due opportunity of hearing to the petitioner and other affected parties.

- (7) Record of the Labour Court be sent back forthwith.
- (8) The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-