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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 74 of 2017**

M/s Laxmi Engineering Services Pvt. Ltd. Office At B-3, Vandana Housing Society, Panchsheel Chowk, Ramdas Petha, Nagpur- 10, District Nagpur (Maharashtra State) Through Its Power Of Attorney Holder Mohd. Javed Raza, S/o Shri Zahir Hussain, Aged About 39 Years, R/o Near S B I Bank, Mandi Road, Ward No. 9, Belha, District Bilaspur (Chhattisgarh) (Wrongly Mentioned in the order as through its proprietor).

---- Petitioner**Versus**

1. Chhattisgarh State Electricity Distribution Company Limited Through Chief Engineer (Vi. Chhe.), Bilaspur, District Bilaspur (Chhattisgarh).
2. The Chief Engineer (Operation/ Maintenance) Chhattisgarh State Electricity Distribution Company Limited, Raipur, District Raipur (Chhattisgarh).
3. The Executive Engineer, Public Health & Engineering Department, Project Section, Gitanjali City Bahtarai Road, Sarkanda, Bilaspur, District Bilaspur (Chhattisgarh).
4. Smt. Shobha, Wd/o. Late Gurappa Kolar, Aged About 39 Years,
5. Ku. Rajeshwari D/o Late Gurappa Kolar, Aged About 20 Years,
6. Ku. Priya, D/o Late Gurappa Kolar, Aged About 11 Years Natural Guardian- Sobha Kolar,
7. Raj, S/o Late Gurappa Kolar, Aged About 8 Years Natural Guardian- Sobha Kolar,
8. Smt. Chadavva, W/o Upashappa Kolar, Aged About 62 Years,

Respondents No.4 to 8 are R/o Malwadi, P O Bhilwadi, Tahsil Palus, District Sangli (Maharashtra State).

---- Respondents

For Petitioner : Shri Mateen Siddique, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24/03/2017.**

1. The present petition has been filed assailing the order dated 03.01.2017 passed by the Commissioner for Employees Compensation, Labour Court, Raipur. Vide the said order, the court below has rejected the

application under Section 9 Rule 13 CPC filed by the petitioner seeking for setting aside of exparte award dated 28.04.2016. The sole ground of rejection of the application under Order 9 Rule 13 CPC was that the application has been preferred by the petitioner through their attorney holder namely Mohd. Zaved Raza.

2. The contention of the petitioner is that it is a case where the petitioner, a private limited company, headquarters at Nagpur, have got large number of works in the State of Chhattisgarh and is operating their business through the attorney general namely Mohd. Javed Raza.
3. The facts in brief is that, an accident had taken place in the establishment of respondent No.1 near Tarbahar, Bilaspur, on 16.09.2009 in which one Gurappa Kolar had died. Thereafter, the dependent of the said deceased had moved an application before the Labour Court, Raipur for grant of compensation under the provisions of Employees Compensation Act. The said case was registered as case No.88/WC Act/2010/Fetal.
4. The present petitioner was respondent No.4 before the Court below. Notice were issued however, according to the petitioner no proper service was effected upon the petitioner. The other respondents i.e. Electricity Board as well as Public Health Engineering Department had represented before the court below and have contested the case on merits. The court below proceeded exparte against the petitioner on 28.04.2016. Subsequently, the petitioner was intimated by the respondent-Public Health Engineering Department with respect to said exparte award being passed against the petitioner. It is only then, they came to know about passing of exparte award. Immediately thereafter

an application under Order 9 Rule 13 CPC was filed before the court below on 13.12.2016. Along with said application, the petitioner had also moved an application under Section 5 of Limitation Act read with Section 10(2)(a) of the Employees Compensation Act. It is this application which stands rejected by the court below vide impugned order dated 03.01.2017 only on the ground that the petitioner herein was only an attorney holder.

5. Along with the petition, the petitioner has enclosed duly executed power of attorney in the name of Mohd. Javed Raza who also is discharging his duties as Site Engineer on behalf of the petitioner's company in the State of Chhattisgarh at Bilaspur. Since the petitioner is a private limited company and that proper power of attorney was duly executed in favour of Mohd. Javed Raza, the court below should have accepted the application and have decided the same on its own merits in spite of deciding the application on technicalities.
6. True it is that Employees Compensation Act is a liberal legislation, but that does not mean that principal employer or immediate employer against whom a claim have been made is be treated casually. A liberal and more pragmatic approach needs to be adopted in such matters so that substantive rights of the parties do not get defeated only on technicalities. In the instant case once when an application under Order 9 Rule 13 has been filed, the court below should have taken a more pragmatic view and should have entertained the same in accordance with rules. It should have been verified whether sufficient ground has been established by the petitioner before the court below justifying the fact whether proper notice has not been effected upon the petitioner or

not.

7. It would be pertinent to refer to the decision of the Full Bench of Allahabad High Court in the case of Syed Wasif Husain Rizvi Vs. Hasan Raza Khan and Others, decided on 22.01.2016, dealing on the issue whether a petition could be filed by a Power of Attorney holder. Though, the said decision of Allahabad High Court was pertaining to a writ petition under Article 226 of the Constitution of India, this court finds out sufficient strength for applying the same principle for the proceeding before the Labour Court. In paragraph – 23 of the said judgment, the Allahabad High Court has held as under :

“23. When a writ petition under Article 226 of the Constitution of India is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or claim personal to him but acts as an agent of the donor of the instrument. The petition which is instituted, is always instituted in the name of the principals who is the donor of the power of attorney and through whom the donee acts as his agent. In other words, the petition which is instituted under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceedings are instituted before the court.”

8. In view of the aforesaid decision and also the observations made in the preceding paragraphs, this petition is allowed. The impugned order dated 03.01.2017 is quashed. It is held that the application was maintainable at the instance of a Power of Attorney holder. The court below is directed to consider and decide the application under Order 9 Rule 13 CPC filed by the petitioner afresh on its own merits.

Sd/-

(P.Sam Koshy)
Judge