

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2831/2017

M/s. Suyog General Stores & Anr.

... Petitioners

V/s.

Shridhar Vishram Shinde

... Respondent

Mr. A. K. Jalisatgi with N. N. Kankonkar i/b. Ratnesh R. Mishra for the
petitioners

Mr. Narendra R. Kolte for the Respondent No.1.

CORAM: K.K. TATED, J.

DATED : APRIL 6, 2017

PC. :

1. Heard the learned counsel for the parties. Yesterday, the matter was on board for admission. After hearing the parties for some time, the matter was posted today for final disposal at the stage of admission itself.

2. By this petition under Article 226 and 227 of the Constitution of India the Petitioner challenges the judgment dated 01.02.2017 passed by the Industrial Court, Mumbai allowing the respondent's application for condonation of delay in filing the complaint under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act) for recovery of minimum wages, bonus etc.

3. The learned counsel for the petitioner submits that in the present proceedings, initially there was award dated 10.02.2005 passed by the Labour Court, Mumbai in Reference (IDA) No.839/1998 directing the petitioner to reinstate the respondent worker and to pay back wages with continuity of service w.e.f. 15.08.1987. The learned counsel for the petitioner submits that as the said award was not complied with by the petitioner, the respondent initially filed application u/s.33(1)(a) of the Industrial Disputes Act, 1947 (ID Act) for recovery of back wages. He submits that as soon as they received summons in application u/s.33(1)(a) of the ID Act, they issued a cheque dated 28.06.2010 in the sum of Rs.97,650/-.

4. The learned counsel for the petitioner submits that thereafter on 27.11.2014, the respondent filed complaint under Item 9 of Schedule IV of the MRTU and PULP Act claiming retirement dues, due of minimum wages, bonus, leave wages etc. That complaint was filed by the respondent on 27.11.2014 i.e. after more than 43 years in respect of leave unpaid payment, unpaid due of minimum wages, unpaid bonus and unpaid retirement dues/gratuity amount payment. As there was delay on the part of the respondent in filing the said complaint, the respondent made an application dated 27.11.2014 for condonation of delay. The learned counsel for the petitioner submits that in the said application for condonation of delay, the respondent gave reasons that orally he had called upon the petitioner to comply with the award dated 10.02.2005. The respondent also issued letters dated 18.11.2006, 27.06.2008, 03.07.2013, 06.01.2014 and 19.04.2014. He submits that the respondent, in his application for condonation of delay, specifically

stated that non compliance of award being a continuous and recurring cause of action, there is no question of delay on the part of the respondent to approach the court.

5. The learned counsel for the petitioner relies on paragraph Nos.8 to 12 of his application for condonation of delay, which read thus:

“8. The non compliance of Award is being of continuous and recurring cause of action and is of continuous nature, hence there is no any such delay for filing this complaint about non compliance of award, however, for the sake of For the sake of brevity, the parties will be referred to as per their nomenclature in the suit i.e. and abundant precaution just as to avoid any sort of technicality for seeking justice, this separate application for condonation of delay is filed along with the main complaint.

9. The complainant has time and again orally demanded to the respondents to comply with the Award and also sent his letter dated 18.11.2006 to the respondents and also filed his letters dated 27.06.2008 and 03.07.2013 at the Dy. Commissioner of Labour, Mumbai in the recovery proceedings u/s.33(C)(1) of Industrial Disputes Act, 1947.

The copies of the said letters dated 27.06.2008 and dated 03.07.2013 are annexed at Exhibit-C to main application.

10. The complainant has also duly sent his letters dated 06.01.2014, dated 19.04.2014 to the respondents however, the respondents did not pay any heed to the same.

The copies of the letters dated 06.01.2014, dated 19.04.2014 are annexed at Exhibit D to main application.

11. The complainant submits that, prima facie there is the continuous non compliance of award dated 10.02.2005 passed by the Hon'ble 10th Labour Court, Mumbai in Reference (IDA) No.839/1988 by the respondents and hence the complainant have

the meritorious case and balance of convenience is also in favour of the complainant and the delay if any if not condoned then it will cause serious injustice, harm and injury to the complainant, which will not be compensated in terms of money, however no prejudice will be caused to the respondents as they are liable to comply the said Award dated 10.02.2005.

12. The applicant/ complainant submits that the cause of action is of continuous and recurring nature and the delay if any incurred in filing of this complaint within 90 days is not made deliberately by the applicant but the applicant has made full efforts by demanding time and again to the respondents till date to comply the said award dated 10.02.2005 and the complainant was under bona fide faith and hoping that the respondents will comply the said award, but the respondents deliberately lingered the matter to suite their own convenience and hence they are equally responsible for delay if any for filing of this complaint, therefore the applicant was constrained to file the complaint.”

6. The learned counsel for the petitioner submits that the petitioner filed their reply dated 15.07.2015 opposing the applicant for condonation of delay. He submits that they specifically stated in their reply that the respondent failed to disclose sufficient cause for condonation of delay and therefore same to be rejected.

7. The learned counsel for the petitioner submits that the Industrial Court has misread the material on record and came to the conclusion that the respondent has made out a case for condonation of delay. He submits that the Industrial Court ought to have considered the grounds cited by the respondent for condonation of delay. He submits that the Industrial Court, instead of considering the grounds raised by the respondent in their application for condonation of delay, held that it is the duty of the petitioner to comply with the award dated 10.02.2005.

8. The learned counsel for the petitioner submits that the Industrial Court has grossly erred in holding that the petitioner did not implement the award on its own. He further submits that even the Industrial Court has recorded in its impugned judgment that the petitioner has failed to place on record any documentary evidence to show that they called upon the respondent to join his services.

9. The learned counsel for the petitioner submits that the Industrial Court ought to have appreciated that the respondent has not approached the petitioner for reinstatement. This itself shows that he was not interested in joining the services though he made an application u/s.33(1)(a) of the ID Act for recovery of back wages only. He submits that the Industrial Court ought to have appreciated that the respondent has also filed proceedings u/s.33(1)(a) of the ID Act in spite of making an application for reinstatement. This itself shows that the respondent was not interested in joining the services.

10. The learned counsel for the petitioner submits that in the present proceedings, the respondent is seeking to implement the award dated 10.02.2005 passed by the Labour Court, Mumbai in Reference (IDA) No.839/1988. He submits that as per section 19(3) of the ID Act, the award shall, remain in operation for a period of one year from the date on which it becomes enforceable u/s17A. Section 19(3) reads thus:

19. Period of operation of settlements and awards:

1

2

2(A)

3. *An award shall, subject to the provisions of this section,*

remain in operation for a period of one year from the date on which the award becomes enforceable under Section 17A.

11. The learned counsel for the petitioner submits that at the time of deciding the application for condonation of delay, the Labour Court failed to consider these facts.

12. The learned counsel for the petitioner submits that in the present proceedings, the respondent prayed for dues of minimum wages from 1971. He submits that as per the provisions of section 20(2) of the Minimum Wages Act, 1948, a claim can be made within 6 months from the date of due. Section 20(2) reads thus:

“20 (2) Where an employee has any claim of the nature referred to in sub section (1) the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1) may apply to such Authority for a direction under sub-section (3).

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amounts became payable.

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.”

13. The learned counsel for the petitioner submits that bare reading of the complaint filed by the respondent shows that the respondent has also claimed wages allegedly due and payable by the petitioner. He submits that as per section 15(2) of the Payment of Wages Act, 1936,

the claim is required to be made within a year from the date when it was due. Section 15(2) reads thus:

“15(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or a representative union registered as such under the Bombay Industrial Relations Act, 1946 or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3) and in case of death of the employed person, it shall be lawful for his legal representative to make an application for such direction.

Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be.

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.”

14. The learned counsel for the petitioner submits that these facts were not considered by the Labour Court while deciding the respondent's application for condonation of delay.

15. The learned counsel for the petitioner submits that bare reading of the application filed by the respondent shows that he has failed and neglected to show sufficient cause for condonation of delay of more than 43 years. Therefore, for want of sufficient cause, the Court below ought to have rejected the said application. In support of this

contention, he relies on an unreported judgment of this court dated 03.02.2014 in the matter of *M/s.Windsor Machines Ltd. & Anr. Vs. Mr. Prabhakar Visantrao Thakur & Ors. in Appellate Side Writ Petition No.6531/2013* of this court. He mainly relies on paragraph 28 to 31 which read thus:

28. The Apex Court in the matter of B.Maduri Goud vs. B.Damodar Reddy (2012) 12 Supreme Court Cases 693 held that if the applicant failed to show sufficient cause for condonation of delay, same should be rejected. In similar way, the Apex Court in the matter of Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai (2012) 5 Supreme Court Cases 157 held that no premium can be given for total lethargy or utter negligence on the part of the applicant for condonation of delay. So also the Apex Court in the matter of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nagar Academy and others JT 2013(12) SC 450 held that if there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time barred appeal. In this authority, the Apex Court stated as under:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice oriented, nonpedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining factsituation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully

scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non serious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters.”

29. The Apex Court in the matter of Amalendu Kumar Bera and others vs. State of West Bengal (2013) 4 Supreme Court Cases 52 held that courts should not take liberal approach in the matter of condonation of delay.

30. The Apex court in the matter of Damodaran Pillai & Ors. V/s. South Indian Bank Ltd., reported in 2005(5) ALL

MR 961 (S.C.) held that the principles underlying the provisions prescribing limitation are based on public policy aiming at justice, the principles of repose and peace and intended to induce claimants to be prompt in claiming relief. Hardship or injustice may be a relevant consideration in applying the principles of interpretation of statute, but cannot be a ground for extending the period of limitation.

“20. The principles underlying the provisions prescribing limitation are based on public policy aiming at justice, the principles of repose and peace and intended to induce claimants to be prompt in claiming relief.

21. Hardship or injustice may be a relevant consideration in applying the principles of interpretation of statute, but cannot be a ground for extending the period of limitation”

31. Our High Court in the matter of Chandrakant s/o Shrimantrao Patil v/s. Vikas s/o Balaji Pareshwar, reported in 2011(2) Mh. L.J. 94, held that if delay is not properly explained in the application, then court should not allow the same.

16. The learned counsel for the petitioner submits that unless and until sufficient cause is shown, the Court should not condone inordinate delay in filing the proceedings. In support of this contention, he relies on the judgment of the Apex Court in the matter of **GMG Engineering Industries and Ors. Vs. ISSA Green Power Solution and Ors. 2015(15) SCC 659**, more particularly paragraph 7 thereof, which reads thus:

“7. It is well settled that the expression ‘sufficient cause’ is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of bonafide is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with

vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence.”

17. The learned counsel for the petitioner, on the basis of above mentioned facts, submits that in the interest of justice, this Hon'ble Court be pleased to allow the present Writ Petition by setting aside the impugned order dated 01.02.2017 passed by the learned Labour Court allowing the respondent's application for condonation of delay. He submits that if the petition is not allowed, irreparable loss will be caused to the petitioner.

18. On the other hand, the learned counsel for the respondent vehemently opposed the Writ Petition. He submits that there is no substance in the Writ Petition, it is liable to be dismissed summarily. He submits that admittedly, the respondent issued several letters to the petitioner calling upon them to implement the award dated 10.02.2005. He submits that those letters i.e. dated 18.11.2006, 27.06.2008, 03.07.2013, 06.01.2014 and 19.04.2014 were placed on record before the Labour Court.

19. The learned counsel for the respondent submits that the application made by the respondent u/s.33(1)(a) of the ID Act was decided in the year 2013. He submits that when the respondent made an application u/s. 33 of the ID Act, the petitioner issued a cheque dated 28.06.2010 of Rs.97,650/-. Though at that time, the petitioner had knowledge that they have to comply with the terms and conditions of the award dated 10.02.2005, they failed and neglected to do so.

Hence, it constrained the respondent to file a complaint on 27.11.2014 under Item 9 of schedule IV of the MRTU and PULP Act.

20. The learned counsel for the respondent submits that the Labour Court has rightly held in para 15 of the impugned award that once the award is passed and same is in force, then it is obligatory on the part of the opponent i.e. the petitioner in the present proceedings to implement the same and/or get it set aside from the higher forum of law. The learned counsel for the respondent submits that the Labour Court, in para 17 of the impugned judgment rightly held that if delay is not condoned, irreparable loss will be caused to the respondent. The Labour Court also held that if delay is condoned, same is not going to affect any right of the petitioner.

21. The learned counsel for the respondent submits that the Labour Court has rightly held that there was continuous cause of action and therefore there is no question of rejecting the application for condonation of delay. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***Balakrishna Savalram Fujari Waghinare and Ors. Vs. Shree Dhyaneswar Maharaj Sansthan 1959 DGLS (SOFT) 37***. On the basis of these facts and the law, the learned counsel for the respondent submits that there is no substance in the present proceedings and the petition is liable to be dismissed with costs.

22. Heard both sides at length. It is to be noted that, in the present proceedings there was delay of more than 43 years in claiming unpaid

dues of minimum wages, leave unpaid payment, unpaid bonus etc. By filing a complaint dated 24.11.2014 the respondent claimed unpaid dues of minimum wages, leave unpaid payment and unpaid bonus from 1971. Though the award was passed by the Labour Court on 10.02.2005 in Reference (IDA) No.839/1988 after more than 9 years, the respondent filed complaint under Item 9 of Schedule IV of the MRTU and PULP Act for implementing the same. The reasons given by the respondent were not sufficient for condonation of delay. There is no reason to condone the delay of more than 43 years.

23. As per the provisions of section 28 of the MRTU and PULP Act, a complaint is required to be filed within 90 days from the date of occurrence of the unfair labour practice. In order to ascertain whether the limitation has expired, it is necessary to find out (a) whether the activities complained of as unfair labour practices are of recurring nature, or (b) whether the occurrence of the unfair labour practice was over once it was engaged in and only the effect continuous to flow therefrom. These facts were not considered by the trial court at the time of passing the impugned order. Apart from that the trial court failed to consider the provisions of section 19(3) of the ID Act, section 20(2) of the Minimum Wages Act and section 15(2) of the Payment of Wages Act.

24. It is to be noted that, when the respondent made an application u/s.33(1)(a) of the ID Act, he failed and neglected to make any application and/or proceedings for reinstatement and/or other benefits as per award dated 10.02.2005. Even the Labour Court, in the

impugned order, specifically recorded that the respondent failed to produce any independent evidence to show that he had written several letters to the petitioner calling upon him to comply with the award dated 10.02.2005. Apart from that except writing letters, the respondent has not taken any steps to enforce the award dated 10.02.2005 for more than 9 years. Considering these facts and the judgment of this court in the matter of *M/s. Windson Machines Ltd. & Anr. (supra)* and the Apex Court judgment in the matter of *GMG Engineering Industries & Ors. (supra)*, I am of the opinion that the Labour Court has erred in coming to the conclusion that the respondent has shown sufficient cause for allowing his application for condonation of delay.

25. Apart from that, the observations made by the trial court in para 16 that once the Award is passed, it is the duty of the opponent to implement the same is not correct. If the award is not implemented, it is the duty of the workers to take appropriate steps according to law. Even the observations made by the trial court in para 17 that if delay is condoned, same is not going to affect the petitioner's right, is not correct. There is delay of more than 43 years on the part of the respondent to claim unpaid dues, minimum wages, leave unpaid payment and unpaid bonus payment.

26. Considering these facts and the law, I am of the opinion that the petitioner has made out a case for allowing the Writ Petition.

27. Hence, following order is passed:

- a. The judgment dated 01.02.2017 passed by the Industrial Court, Mumbai for condonation of delay in application (ULP) No.19/2014 is set aside.
- b. The application for condonation of delay in filing the complaint under Item 9 of Schedule IV of the MRTU and PULP Act filed by the respondent stands dismissed
- c. Considering the facts and circumstances of the present case, no order as to costs.
- d. Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)