

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13444 OF 2017

M/s.Bible Society of India .. Petitioner.

Vs.

Vinod Fulchand Ramani .. Respondent.

Mr. A.K. Jalisatgi i/b Amol Desai for the petitioner.

Mr. Jayprakash R. Pawar for the respondent.

CORAM : A.K. MENON, J.

DATED : 20TH DECEMBER, 2017

P.C. :

1. By this petition, the petitioner-society challenges the exparte award dated 3rd June, 2005 and an order dated 5th April, 2017 declaring to set aside the Award and restore the proceedings. It is urged on behalf of the petitioner herein that on or about 6th August, 2015 the petitioner received a letter dated 21st July, 2015 issued by the Commissioner of Labour intimating them of the award dated 3rd June, 2003. The applicant thereupon applied for a certified copy. It is only upon receipt of an award that the petitioner came to learnt that the exparte award to be passed against it. Thereafter the petitioner applied for restoration of the application within the period of limitation. The contention of the petitioner is that although it was aware of the matter, the original proceedings of reference was entrusted to one

Mr.George M. Thomas, Advocate who expired on or about 15th May, 2013. Subsequently, it appears that one Victor Gollapalli working in Mumbai Auxillary office and who was attending to legal matters also expired in the same year and as a result the aforesaid proceedings were not noticed and/or were lost sight of. The new Secretary came to be appointed in May 2014, who was unaware of the matter.

2. During the hearing of Misc. Restoration Application (IDA) No.14 of 2015 it appears that the respondents had consented that the application may be allowed by imposing costs. During the course of arguments the learned Advocate for the respondent conceded that the petitioner's prayer for condonation of delay and restoration of the application be allowed so that exparte award may be set aside. The impugned order records such concession not only in paragraph 8 but also paragraph 16, however, the Court took a view that the concession or consent cannot confer jurisdiction on the Court since it was functus officio, and, therefore, declined to grant any relief and hence restoration application came to be dismissed. This order is under challenge in the petition.

3. Considering the facts of the case and after hearing counsel although Mr.Pawar has vehemently opposed admission of the petition, the order that I propose to pass will serve the ends of justice. I, therefore, pass the following order :

- (a) The impugned order dated 5th April, 2017 is set aside and Misc.. Restoration Application (IDA) No.14 of 2015 is allowed;
- (b) The award dated 3rd June, 2015 will stand set aside immediately upon the petitioner depositing in the IVth Labour Court a sum of Rs.1,50,000/- towards the claim for backwages without prejudice to the rights and contentions of the parties. Such deposit shall be made within four weeks from today.
- (c) The petitioner shall also pay costs of Rs.20,000/- to the respondent within a period of four weeks from today;
- (d) The parties to appear before the IV Labour Court on 19th January, 2018. In the meantime the Award shall not be acted upon by the respondent.
- (e) The petition is disposed of in the above terms.

(A.K. MENON,J.)