

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1295/2016

Managing Director,
K-Pulp and Paper Mill Ltd.

... Petitioner

V/s.

Mr. Sudam Shriram Saindane

... Respondent

Mr. Nitin A. Kulkarni a/w. Mr. A. R. Belge for the petitioner
Mr. Sudam Shriram Saindane - party in person.
Mr. K. S. Bapat – Amicus Curie.

CORAM: K.K. TATED, J.
DATED : MARCH 6, 2017

PC. :

1. Heard the learned counsel for the parties. This court, by order dated 27.02.2017 has appointed Advocate Mr. Kiran S. Bapat as an Amicus Curie, as the respondent worker had submitted before this court that it is not possible for him to engage an Advocate and he wants to argue the matter himself.
2. By this petition under Article 226 and 227 of the Constitution of India the Petitioner company challenges the order dated 12.12.2014 passed by the learned Presiding Officer, Labour Court, Satara in Misc. IDA (Restoration) No.2/2012 dismissing the same.
3. In the present proceedings, the respondent worker made an application for reference which was registered as Reference (IDA)

No.20/2003 before the Labour Court, Satara. Then notices were duly served on the petitioner company. The petitioner company appointed their Advocate to protect their interest before the Labour Court. In meanwhile, the petitioner company's matter was going on before the BIFR. As none appeared on behalf of the petitioner, nor they filed any affidavit, the Labour Court passed *exparte* award dated 16.06.2007 setting aside the termination order dated 08.03.2003 directing the petitioner company to reinstate the respondent in service with 50% back wages.

4. Thereafter the respondent worker issued letter dated 27.06.2008 to the company for compliance of *exparte* award. Thereafter the petitioner company made application for restoration and for condonation of delay in making the application. Delay application was allowed by the Labour Court by order dated 12.12.2014 below Exhibit-1.

5. After hearing both sides, the Labour Court passed the impugned order dated 12.12.2014 rejecting the petitioner's application for restoration of Reference (IDA) No.2/2012, for hearing on its own merits.

6. The learned counsel for the petitioner submits that at the time of passing the impugned order dated 12.12.2014, the Labour Court failed to consider the fact that the petitioner had made out sufficient cause for setting aside the *exparte* award dated 16.06.2007. He submits that because of pendency of a matter before the BIFR, no one was attending

the company office except security guard. He submits that as soon as they received a letter from the respondent worker in the year 2008, they made an application for restoration. He submits that on merits, they have good chance of success before the Labour Court. He submits that though the respondent pleaded that the petitioner company terminated his service on 08.03.2003, in same proceedings, the respondent admitted that he, on his own, tendered his resignation on 27.03.2003. He submits that these facts were not brought on record by the petitioner as none appeared on behalf of them when the matter was argued before the Labour Court.

7. During the course of arguments, the learned counsel for the petitioner submits that they are ready and willing to deposit the entire back wages payable to the respondent as per award dated 16.06.2007. He submits that the matter may be heard on its own merits. He submits that if the matter is restored to file, same is not going to affect any right of the respondent.

8. The learned counsel for the petitioner submits that considering the reasons disclosed by the petitioner in their application for restoration of the Reference and as the petitioners are ready and willing to deposit the entire amount of back wages as well as the wages upto the date of superannuation of the respondent, this Hon'ble Court be pleased to set aside the impugned order dated 12.12.2014 directing the Labour Court, Satara to decide the Reference IDA NO.20/2003 on its own merits. He submits that if the Writ Petition is not allowed, irreparable loss will be caused to them.

9. The learned counsel Mr. Bapat submits that as the petitioner has failed to make out sufficient cause for restoration of the complaint, there is no question of entertaining the Writ Petition. He submits that as per Rule 26 of the Industrial Disputes (Maharashtra) Rules 1957, the Court can restore the complaint/Reference and set aside the *exparte* award, if the aggrieved party shows sufficient cause for non appearance when the award/judgment was passed. He submits that in the present proceedings, the petitioner company failed to make out any sufficient cause. Hence, there is no substance in the Writ Petition, same shall be dismissed with costs.

10. Advocate Mr. Kiran S. Bapat, Amicus Curie has taken great efforts which is appreciated by this court.

11. Heard the learned counsel for the parties. I have gone through the copy of the application made by the petitioner for restoration of the reference by setting aside the *exparte* award dated 16.06.2007. In the present proceedings, the respondent worker has already attained the superannuation on 26.06.2012. Considering these facts and as the petitioner company is ready and willing to deposit the entire back wages as per impugned order dated 16.06.2007 and subsequent wages up-to the date of attaining superannuation by the respondent workers, following order is passed:

- a. The order dated 12.12.2014 passed by the learned Presiding Officer, Labour Court, Satara in Misc. IDA (Restoration) No.2/2012 is set aside.

- b. The application made by the petitioner being Misc. IDA (Restoration) No.2/2012 before the Labour Court on 15.07.2008 is allowed.
- c. The Labour Court is directed to hear the Reference IDA No.2/2003 on its own merits.
- d. Liberty granted to the petitioner, if they so desire, to file a written statement and/or affidavit within four weeks from today with copy to other side.
- e. Hearing of Reference IDA No.20/2003 is expedited.
- f. The petitioner to deposit the entire back wages as per Award dated 16.06.2007 and subsequent wages payable to the respondent upto the date of superannuation i.e. 26.06.2012 in Labour Court within six weeks from today.
- g. If amount is not deposited within stipulated time as stated hereinabove, the Writ Petition shall stand dismissed without further reference to the court.
- h. If amount is deposited within stipulated time as stated hereinabove, the respondent worker is entitled to withdraw 50% of the same, without furnishing any security, except personal bond.
- i. The Labour Court is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the Reference (IDA) No.20/2003.
- j. The Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)