

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1009 of 2017

M/S Matrix Electrical Pvt.Ltd.	...Petitioner
Versus	
Shivaji Gawde	...Respondent

Mr. Mahesh Shukla for the Petitioner
Mr. Neeta Karnik for the Respondent.

CORAM: SMT.ANUJA PRABHUDESSAI, J
DATED: 16th June, 2017

PC:-

1. Rule. Respondent waives service. By consent the Petition is heard finally at the stage of the admission.

2. The Petitioner herein has challenged the order dated 4 January, 2017 passed by the learned Presiding Officer of 7th Labour Court at Mumbai in Reference (IDA) No. 140/12.

3. Heard the learned Counsels for the respective parties. Pursuant to the dispute raised by the Respondent, a Reference bearing IDA No.140 of 2012, came to be made to the 7th

Labour Court Mumbai. The Labour Advisor, engaged by the Petitioner failed to remain present before the Labour Court. The Reference proceeded ex-parte and by an ex-parte Award dated 12.07.2013, the Petitioner was directed to reinstate the Respondent with full back wages and continuity in service with effect from 11.2.2011.

4. The Petitioner filed a Restoration Application (IDA) No.28 of 2013 for setting aside the ex-parte award. The said application was allowed by order dated 30th April, 2015, consequently the, ex-parte award dated 12.7.2013 was set aside subject to costs of Rs.20,000/- to be paid to the Respondent. The Petitioner was directed to pay the said costs within a period of one month from the date of the order.

5. The Petitioner failed to pay the costs within the stipulated time. The Respondent refused to accept the costs which were sought to be paid after the stipulated time. The

Petitioner therefore, filed an application to permit him to deposit the costs and to take the reference on Board.

6. The Petitioner was permitted to deposit the costs. However, upon hearing the parties, the Learned Presiding Officer of the Labour Court dismissed the application filed by the Petitioner mainly on the ground that the costs were not paid within the stipulated time. The Learned Judge, thus confirmed the ex-parte award dated 12.07.2013. Being aggrieved by the said order, the Petitioner has invoked the writ jurisdiction of this Court.

7. It is not in dispute that the Petitioner was required to pay the costs within one month from the date of the order dated 30/04/2015, it is seen that letter dated 27th May 2015, the Respondent had called upon the petitioner to comply with order. The Petitioner did not pay the costs within the stipulated time but forwarded a cheque for the said amount by letter dated 16/06/2015. The Respondent did not accept

the cheque as the costs were sought to be paid beyond the period of one month, as stipulated in the orders returned the cheque under covering letter dated 26th June, 2015. There was further correspondence between the parties over the issue. Finally on 8th September, 2015 the Petitioner sought leave of the Court to deposit the costs. The Petitioner was permitted to deposit the costs but upon hearing the parties, the Labour Court rejected the prayer to set aside the ex-parte order and permitted the Petitioner to withdraw the costs.

8. It is not in dispute that the costs were to be paid within one month from the date of the order i.e. within one month from 30.04.2015. There is also no dispute that the costs were not paid within one month but were sought to be paid vide cheque drawn on 16.6.2015. There was thus delay in making the payment. This however, would not affect the powers of the Court to extend the time under Section 148 of the Code of the Civil Procedure or the powers of the Court under Section 151 of the Code of the Civil Procedure to extend the

time beyond 30 days. In the instant case, the learned Judge has not given any reasons for not resorting to the provisions of Section 148 or 151 of the Civil Procedure Code, particularly, when the Petitioner had shown its bonafides by issuing a cheque in favour of the Respondents. The order is passed in a mechanical way and cannot be sustained.

9. The learned Counsel for the Petitioner has submitted that as a bonafide gesture the Petitioner will deposit an amount of Rs.2,00,000/- before the Labour Court within a period of two months from the date of this Order.

10. Considering the above facts and circumstances, and for the ends of justice, the Petition is allowed. The impugned order dated 4th January, 2017 is hereby set aside subject to the Petitioner depositing an amount of Rs.2,00,000/- before the Labour Court within a period of two months, in two equal instalments. The amount so deposited shall be invested in any Nationalised Bank under the fixed deposit and the same shall

be subject to the final outcome of the Reference. Costs of Rs.20,000/- which have been deposited before the Labour Court shall be paid to the Respondent.

11. Considering that the Reference is of the year 2012, the 7th Labour Court, Mumbai shall endeavour to dispose of the Reference as expeditiously as possible and in any event within a period of one year from the date of the deposit of the said amount.

12. The Writ Petition stands disposed of.

(ANUJA PRABHUDESSAI, J.)