

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204

FAO No.1657 of 2014 (O&M)
Date of decision: 06.04.2017

M/s Mittal Timber Traders

....Appellant

Versus

Hemraj

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sandeep Kotla, Advocate, for the appellant.

Mr.Ashish Gupta, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

CM-5805-CII-2014

The present appeal is barred by 206 days. The reason given for the delay in the present application is that initially, CR-350-2014 was filed before this Court, which was withdrawn on 10.02.2014, with liberty to challenge the main award.

No reply has been filed to the application. Even otherwise, sufficient grounds are made out to condone the delay.

Accordingly, in view of the averments made in the application, duly supported by an affidavit, the present application is allowed and the delay of 206 days in filing the present appeal, is, hereby, condoned.

FAO-1657-2014 (O&M)

The present appeal is directed against the order dated 28.06.2013, whereby an amount of Rs.4,13,338/- has been awarded as

compensation to the respondent-claimant. Challenge has also been raised to the order dated 11.12.2013, whereby the application for setting aside the *ex parte* order dated 28.03.2013 and the final order, was also dismissed by the Commissioner.

Counsel for the appellant has submitted that on the first date itself, notice was issued and *ex parte* proceedings were initiated on 28.03.2013, on account of registered covers not being received back. He submitted that proceedings were, thereafter, finalized within a period of 3 months, by 28.06.2013, holding that the amount has been assessed, as such. It is submitted that the amount has already been deposited with the Commissioner and therefore, a chance be given to contest the main proceedings. It is further the case of the appellant that on 25.07.2013, an application was filed for setting aside the *ex parte* order dated 28.03.2013 and the final order dated 28.06.2013. However, the counsel did not appear on 27.08.2013 and therefore, the application was dismissed. Thereafter, another application was filed on 03.09.2013, for review of the order but the same was also dismissed due to non-appearance of the counsel on 12.09.2013. On 21.11.2013, another application was filed through another counsel and eventually, the Commissioner dismissed the said application on 11.12.2013, which is also, now, subject matter of challenge.

The Commissioner had dismissed the said application on the ground that the *ex parte* order dated 28.03.2013 and the final order dated 28.06.2013 was in the knowledge of the appellant and thereafter also, subsequent applications had been filed but he did not appear and the intention was to linger on the matter and the application was, accordingly, dismissed. The finding, as such, which are recorded by the Commissioner, seems to be justified, in the facts and circumstances, as apparently, the negligence on the part of the appellant is patent on the face of the record. The poor employee has been forced to litigate and run around and not allowed to get the fruits of the litigation, on account of the accident due to which he has become 40% disabled. However, this Court cannot lose sight of the fact that since the Courts have to decide on the merits and the amount, now, stands duly deposited, to the tune of Rs.4,46,402/-, the interest of the employee can be protected by putting the said amount in a fixed deposit, to earn maximum rate of interest. The employee can also be duly compensated by imposing costs upon the appellant, so that the costs of unnecessary litigation are duly reimbursed to him.

Resultantly, keeping in view the above facts, the present appeal is allowed and the impugned orders dated 28.03.2013, 28.06.2013 and 11.12.2013 are set aside, subject to payment of Rs.25,000/- as costs, which will be deposited by way of demand

draft with the Commissioner on the date of appearance before him, i.e., on 22.05.2017. In case the amount is not paid on the said date, the orders which have been set aside, will come back into force and thereafter, the amount duly deposited, will be disbursed to the respondent-claimant.

06.04.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*