

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 739 OF 2006

Janardhan Vishwanath More,
age: 70 years, Occ: Nil,
R/o Mursadpur, Tq.Omerga,
District Osmanabad.

Appellant

Versus

01 The State of Maharashtra
through the Collector,
Osmanabad,
Tq. & District Osmanabad.

02 Ganpat s/o Vishwanath More,
age: 50 years, Occ: Nil,
R/o Mursadpur, Tq. Omerga,
District Osmanabad.

Respondents

Mr. Shaikh Shoyab, advocate for appellant.
Mr.B.V. Virdhe, AGP for respondent no. 1.

CORAM : M.S.SONAK, J.
DATE : 13th February, 2018.

ORAL JUDGMENT :

1 Heard learned Counsel for the parties.

2 This appeal is directed against the judgment and award dated 24.04.2006, made by the Reference Court, rejecting the Reference of the appellant on the short ground that the appellant failed to adduce any evidence whatsoever before the Reference Court. This means that this is a case where the Reference has been virtually dismissed on account of default on the part of the appellant in adducing evidence before the Reference

Court.

3 Mr.Shoyab Shaikh, learned Counsel for the appellant, at the outset, makes a statement that the appellant will not claim any interest or statutory benefits for the period between 24.04.2006 and the date on of this order, in case, this Court considers grant of further opportunity to the appellant to adduce evidence before the Reference Court.

4 Mr.Shoyab Shaikh, points out that the appellant had entrusted the matter to his advocate and in the absence of final instructions from the advocate, appellant could not lead any evidence before the Reference Court. Mr.Shaikh points out that in this case, Respondent-State has not even filed reply to the application for reference, in which, the appellant had applied for enhanced compensation. Mr.Shaikh submits that this is a fit case where another opportunity requires to be granted to the appellant. Now the appellant is prepared to forgo claim of interest and statutory benefits in respect of delayed period.

5 Mr.Virdhe, learned A.G.P. for Respondent-State, submits that in this case, several opportunities were granted to the appellant to lead evidence before the Reference Court. However, there is no justification on behalf of the appellant in not proceeding with the matter before the Reference Court. He submits that in these circumstances, there is absolutely no error in the impugned judgment and award, by which, the Reference came to be rejected.

6 In this case, though there is some lapse on the part of the appellant, the impugned order, by which the Reference has been rejected, is quite disproportionate to the lapse of not pursuing the matter before the Reference Court. There is nothing unreasonable or *mala fide* in the explanation now submitted by the appellant. The appellant relied upon the advice and instructions from his advocate as to the carriage of the matter before the Reference Court. Mr. Shaikh submits and quite rightly that the appellant has not gained anything and if the appellant is now offered an opportunity, he will now lead evidence before the Reference Court in support of plea of enhancement in compensation. Mr. Shaikh emphasizes that the appellant will not claim any interest and statutory benefits on account of delay and for the delayed period.

7 Taking the aforesaid circumstances into consideration, it is only appropriate that the impugned judgment and award is set aside and the appellant is furnished yet another opportunity.

8 In similar circumstances, the Hon'ble Supreme Court in the case of **Ramanlal Deochand Shah Vs. State of Maharashtra & another**, AIR 2013 SC 3452, did grant a second opportunity to the appellant, whose Reference Application was dismissed for failure on his part to lead any evidence before the Reference Court. However, the Hon'ble Supreme Court, in para 14 of the said judgment, held that since, however, this opportunity is being granted, it is only fit and proper to direct that if the Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant-owners, such

amount would not earn interest for the period between the date of the judgment of the Reference Court and the date of the order made by the Hon'ble Supreme Court, setting aside the order of the Reference Court.

9 Since, in the present case, the appellant has, on his own accord, waived any claim to interest and statutory benefits in the interregnum, as aforesaid, and further taking into consideration facts and circumstances of the present case, as also ruling of the Hon'ble the Supreme Court, it is only appropriate that this appeal is allowed and the impugned judgment and award dated 24.04.2006, is set aside.

10 The appeal is accordingly allowed with the following order:

(A) The impugned judgment and award dated 24.04.2006 is set aside;

(B) LAR No.321/2005 is now restored to the file of the Reference Court, which is directed to dispose of the Reference in accordance with law and on its own merits, as expeditiously as possible, and in any case, within a period of one year from the date of submission of authenticated copy of this order.

(C) The statement of the appellant as regards waiver is accepted. This means that for the period between 24.04.2006 and 13.02.2018, the appellant shall not be entitled to any interest or statutory benefits, even if the Reference Court ultimately comes to

the conclusion that the appellant is entitled to enhanced compensation.

(D) Parties to appear before the Reference Court on 05.03.2018 and file authenticated copy of this order. All concerned to act upon authenticated copy of this order.

11 In the facts and circumstances of the present case, there shall be no order as to costs.

12 Pending Civil Application, if any, does not survive and stand disposed of.

M.S.SONAK
JUDGE

adb