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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11037 OF 2017

M/s. Rotex Engineers

... Petitioner

vs.

Avinash Manjubapu Shelar

... Respondent

.....

Mr. Nitesh Bhutekar for the Petitioner.

Mr. Vikas H. Shekdar for the Respondent.

.....

CORAM : A.K. MENON, J.

DATE : 14th FEBRUARY, 2018

P.C.

1. By this petition, the petitioner a sole proprietary concern seeks setting aside of the award dated 16th November, 2015 by which the Labour Court held that the services of the respondent were illegally terminated and directing reinstatement with continuity of service and full back wages within 30 days of the award. When the order was passed the petitioner was not represented.
2. Mr. Bhutekar, learned counsel for the petitioner submitted that for medical reasons the proprietor of the petitioner could not attend and that is how the impugned order came to be passed. The petitioner then filed Miscellaneous Application (IDA) No. 11 of 2016 under clause 26(2) of the Industrial Disputes (Bombay) Rules, 1957 (the Act) for restoration of the reference

wherein it was pointed out that he could not attend the reference due to medical reasons. The petitioner further contended that since there were only four or five employees in the establishment, he could not depute anyone to attend to the matter. Mr. Bhutekar contended that the petitioner did not get appropriate opportunity to oppose the reference. According to Mr. Bhutekar there was no delay in filing the application under clause 26(2) of the Act and therefore he submitted that this petition be allowed.

3. The application was opposed by Mr. Shekdar on behalf of the respondent pointing out that the petitioner chose to remain absent from time to time and despite several opportunities granted to them no written statement was filed. Mr. Shekdar submits that there is no reason whatsoever for setting aside the order since the petitioner remained absent despite knowledge of the matter. Mr. Shekdar submitted that not only has the petitioner failed to make out a case, but in a subsequent Complaint (ULP) No. 159 of 2017 filed alleging unfair labour practices alleging oral termination of the services of the respondent on 26th March, 2014 an ex-parte judgment has been passed on 11th September, 2017. A copy of the said judgment is produced today by Mr. Shekdar records that the award passed in Reference (IDA) No. 248 of 2014 an order dated 16th November, 2015 (which is sought to be impugned in this petition) had been displayed on the notice board on 15th February, 2016. After one month of the publication of the award it was obligatory for the petitioner to implement the award. However the petitioner failed to do so. The respondent had therefore sought implementation of the award dated 20th

June, 2016. The petitioner had failed to implement the award and such act of omission constitutes unfair labour practices under Section 9 and 10 of Schedule IV of the Act. Paragraph 5 of the order impugned order states despite service of notice petitioner remained absent and the respondent had filed his examination in chief relating to contents of the complaint. The complaint was allowed exparte.

4. Having heard the learned Advocates of the parties at some length I find that the record indicates that in the course of hearing of the application under clause 26(2) of the Act the petitioner had relied upon a medical certificate which shows acute joint pains fever and weakness and he was advised only 3 days rest. He also relied upon correspondence requiring him to attend to some business. It appears that evidence was led in the restoration application wherein the petitioner proprietor contended he was punctual in attending the matter but respondent was not prompt in filing of claim during the relevant time and from time to time it was getting adjourned.
5. It is further contended that in and around January, 2015 the petitioner was not feeling well and in he was unable to attend the Court. He could not even appoint an advocate to attend the Court due to heavy workload at his work place. It is contended that an opportunity be given to the petitioner so that the matter could be heard on merits after the petitioner files his defence. In the said restoration application two reasons are given. Firstly that due to unavoidable circumstances the petitioner could not attend the hearing of the

earlier reference. Secondly it was contended that from January 2015 the applicant was not feeling well and therefore could not attend the Court on medical grounds. Thirdly that the petitioner was required to look after his business at the work shop. Since there were only four or five employees he was unable to appear in person in the court or depute any one. It is further stated that he could not appoint any Advocate to attend to the hearing. The impugned judgment dated 20th June, 2017 observed that the applicant had failed to make out good and sufficient reasons to condone the delay.

6. In its attempt to make out a case the petitioner proprietor was examined along with two other witness Santosh Pandurang Bhange and Prabhakar Tatoba Nakade. The Labour Court has come to a finding that there was no substance in the contentions of the petitioner. Correspondence relied upon by the petitioner pertains to business issues of delay of dispatch material to client. But the more relevant aspect of medical condition of the petitioner, the only medical certificate relied upon was for the period 1st January, 2015 to 3rd January 3rd 2015. Whereas the award came to be passed on 16th November, 2015. The reason that the petitioner was busy in his business activities was held not to be sufficient enough, ignoring the pending reference. In the circumstances rejection of the application by the labour court cannot be faulted. I find that the restoration application admitted the fact that the applicant could not attend the hearing for reasons which are not entirely convincing but I am of the view that one opportunity should be given to the petitioner to defend the case.

7. The respondent has diligently pursued the complaint before the 2nd Labour Court, Pune. Substantial efforts have gone into prosecuting the reference and he has succeeded. There after an application for restoration was taken out which was also opposed successfully and final fresh Complaint (ULP) No. 159 of 2017 was filed in which respondent has succeeded. However the Petitioner's defence was not before court and in my view the respondent is liable to be suitably compensated by way of costs. In the circumstances, I pass the following order :

(i) Subject to payment of costs of Rs.50,000/- as condition precedent to the respondent within a period of three weeks from today the impugned order and judgment dated 16th November , 2017 is set aside.

(ii) It is clarified that if costs are paid as aforesaid, the reference shall stand restored to file and the petitioner will be entitled to file its written statement within a period of two weeks from date of payment of costs. The labour court may then consider hearing the complaint in a time bound manner without granting unnecessary adjournments to the petitioner.

(iii) If costs are not paid, this petition shall stand dismissed without further orders of the Court.

(A.K. MENON, J.)