

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.384 OF 2012
IN
REVIEW PETITION (L) NO.75 OF 2012
IN
WRIT PETITION NO.539 OF 2000**

Shri Tukaram Shankar Rahate

..Applicant

In the matter between

Shri Tukaram Shankar Rahate

..Petitioner

Vs.

New Great Eastern Girni Kamgar Committee & Ors

..Respondents

**Mr. S. N. Deshpande a/w Ms Nivedita Deshpande a/w Ms Swarna Munshi
for the Applicant / original Petitioner in Review Petition
Mr. Avinash Jalisatgi for the Respondent No.3**

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 7th AUGUST, 2018**

P.C.

1 The above Notice of Motion has been filed seeking condonation of delay of 2743 days in filing the Review Petition. The Review Petition has been filed by the Applicant / Review Petitioner seeking review of the order dated 7-3-2005 passed in the above Writ Petition No.539 of 2000 to the extent of declaring it to be not applicable to the Applicant and not binding upon the Applicant. Further relief sought in the Review Petition is to hold and declare that the settlement dated 25-1-2005 and 30-1-2005 at Exhibit H and I are not binding upon the Applicant. Further relief is sought that the Industrial Court be directed to decide the Appeal (IC) No.112 of 2006 on its own merits

without relying upon the order of the Division Bench comprising of F. I. Rebello and S. P. Kukday JJ, (as their Lordships then were) dated 7-3-2005.

2 In so far as the delay is concerned, the same is sought to be explained by the reasons which are mentioned in the Affidavit in Support of the Notice of Motion. It is averred in the Affidavit in Support that the Applicant was not aware of the filing of Writ Petition No.539 of 2000. It is further averred that since the Applicant was not allowed to report for duties, he had filed an application being (BIR I/C) No.248 of 1996 on 18-7-1996. In the reply filed to the said application i.e. Written Statement, the Respondents did not plead the settlement arrived at in Writ Petition No.539 of 2000, but at the time of the final arguments, the Respondents made a statement about the said settlement. It is further averred that it is on the basis of the said settlement that the application filed by the Petitioner being (BIR I/C) No.248 of 1996 came to be rejected by the Labour Court vide order dated 18-10-2006. Against the said order dated 18-10-2006 the Applicant filed an Appeal being (I.C.) No.112 of 2006. It is further averred that the Applicant had also given notice to Advocate Ms Gayatri Singh who had appeared in the said Writ Petition No.539 of 2000 for the New Great Eastern Girni Kamgar Committee (for short Kamgar Committee) seeking clarification in respect of the settlement. The response of Ms Gayatri Singh that she had already filed / given her explanation dated 3-10-2009 in Misc Criminal Complaint (BIR)

No.05 of 2002 filed by another employee of the mill. The explanation was to the effect that since the employee was not party to the settlement, it was not applicable to him. The said clarification of Ms Gayatri Singh was brought to the notice of the Industrial Court, however, the Industrial Court vide order dated 30-3-2011 rejected the Appeal in the light of the order dated 7-3-2005 passed in the said Writ Petition No.539 of 2000 on the ground that the Labour and the Industrial Court could not go beyond the order passed by the High Court.

3 It is thereafter averred that since the Applicant was not a party to the said Writ Petition No.539 of 2000, he had to take steps to obtain a copy of the said Writ Petition for which he once again addressed a letter to Ms Gayatri Singh. It is averred that Ms Gayatri Singh did not furnish a copy of the Writ Petition to him and informed him orally that she had not retained any copy of the Writ Petition. The Applicant thereafter approached M/s Kanga & Co. who were appearing for the employer by letter dated 1-8-2011, but M/s Kanga & Co. also informed the Applicant that they had handed over papers back to the Company. It is further averred that the Applicant thereafter vide notice dated 16-8-2011 to the Company i.e. New Great Eastern Spinning and Weaving Mills Ltd., requested it to furnish a copy of the Writ Petition. The Company vide letter dated 25-8-2011 which was in response communicated its inability to furnish a copy of the Writ Petition. It is further averred that since the

attempts of the Applicant to obtain a copy from the party failed, he had to approach the registry of this Court. He accordingly filed a precipe before the Prothonotary and Senior Master and the Prothonotary and Senior Master accordingly directed the office to furnish a copy subject to payment of charges to the Applicant. The Applicant accordingly paid charges of Rs.600/-. Even after payment of charges the office did not furnish the copy immediately to the Applicant. However, ultimately the copy of the Writ Petition was provided to him on 27-2-2012 and thereafter he has filed the instant application on 9-8-2012 seeking review of the order dated 7-3-2005 recording the settlement between the parties. In support of the aforesaid case the Applicant has relied upon the correspondence that he has exchanged with Ms Gayatri Singh, the letters addressed to M/s Kanga & Co. as also the New Great Eastern Spinning Mill Ltd. It is on the basis of the aforesaid reasons that the Applicant is seeking condonation of delay to the extent of the days which are appearing in prayer clause (a) of the Notice of Motion.

4 On behalf of the Respondent the said case is sought to be controverted by filing an Affidavit in Reply to the above Notice of Motion. Knowledge of the settlement which took place is sought to be attributed to the Applicant. It is further stated that the Applicant ought to have approached this Court immediately after his application being (BIR I/C) No. 248 of 1996 came to be rejected. However the over arching reason mentioned in the Affidavit in

Reply is the knowledge of the settlement to the Applicant.

5 We have heard the Learned Counsel for the parties.

6 The Learned Counsel Mr. Deshpande appearing for the Applicant would reiterate the case of the Applicant as set out in the Affidavit in Support of the Notice of Motion. The Learned Counsel would submit that the Applicant was not aware of any settlement and only after the application filed by him being (BIR I/C) No.248 of 1996 came to be rejected on the ground of the settlement that he became aware of the said settlement. The Learned Counsel would submit that implicit in the explanation of Ms Gayatri Singh is the fact that the Applicant was not a party to the settlement as Ms Gayatri Singh has in terms stated that the settlement would be binding only on such workmen who were parties to the settlement. The Learned Counsel would contend that the Applicant being a workman did not have the wherewithal to approach this Court expeditiously as time was lost in collecting the papers for filing the instant application. The Learned Counsel would therefore submit that the delay though of 2743 days has been sufficiently explained and therefore discretion is required to be exercised in favour of the Applicant.

7 Per contra the Learned Counsel Mr. Jalisatagi would contend that the factum of the settlement was known to the Applicant. The Learned

Counsel would submit that the settlement was in respect of a large number of workers whose names appeared in the list which was prepared and in respect of which workmen the settlement has been arrived at between the company running the Spinning Mill and the Kamgar Committee. The Learned Counsel would submit that the Respondent has in terms of the settlement deposited the amount in the court and it was for the Applicant to withdraw the said amount. The Learned Counsel would therefore submit that no case for exercise of discretion is made out. The Learned Counsel placed reliance on the judgment of the Apex Court in the matter of **Byram Pestonji Gariwala Vs. Union Bank of India & Ors**¹ and the order of the Learned Single Judge dated 30th June 2004 in Civil Application No.541 of 2004 in Writ Petition No.3641 of 2003 in the matter of **Association of Chemical Workers Vs. Jaysnth Anthraquinone Ltd.**, in support of his submission that the settlement need not be interfered with.

8 Though we are dealing with the above Notice of Motion which as indicated above has been filed for condonation of delay, it is required to be noted that the reasons mentioned for the delay would also have an impact in so far as the case of the Applicant for seeking review of the order dated 7-3-2005 recording the settlement, passed by the Division Bench of this Court. In a way it can be said that the reasons for the delay and the reasons for the review are over lapping. The Applicant as indicated above was working as

¹ (1992) 1 Supreme Court Cases 31

weaver in the textile mill in question. Fortunately it is one of the Spinning Mills which is still in operation albeit on a reduced scale. It is the case of the Applicant that after the lock out was lifted, the Applicant was not allowed to resume duties which triggered of the filing of the said (BIR I/C) Application No.248 of 1996. It seems that contemporaneously the matter had reached this court by way of Writ Petition No.539 of 2000 making a grievance against the management that inspite of the directions of the AIFR the Spinning Mill was not being restarted. It is in the said proceedings that the parties reached a settlement and it appears that the Applicant's name was in the list of workers in respect of whom the settlement had been arrived at. The said list was in respect of all pending matters wherever they were pending. The Applicant's matter was shown as pending before the Labour Court. The Applicant was not aware of any such negotiations taking place between the Company and the Kamgar Committee. The said settlement was arrived at under the active participation of the Learned Counsel Ms Gayatri Singh who was appearing for the Kamgar Committee in the said Writ Petition No.539 of 2000. The facts as narrated hereinabove indicate that the said settlement arrived at between the Company and the workmen was without the Applicant being aware of the same. In fact the facts as disclosed show that the Applicant was oblivious of the said Writ Petition being No.539 of 2000 filed in this Court. It is only when his application being (BIR I/C) No.248 of 1996 was dismissed on account of the order dated 7-3-2005 passed by the Division Bench that the Applicant can

be said to have become aware of the said Writ Petition and the settlement arrived at between the parties. Since the Applicant had a remedy by way of an Appeal before the Industrial Court against the order passed by the Labour Court dismissing his application, the Applicant chose to file an Appeal. The said Appeal also came to be dismissed on the same ground as the application by the Labour Court. It is thereafter that the Applicant took steps to file the instant application for condonation of delay in filing the Review Petition. In our view having regard to the strata of society to which the Applicant belongs and considering the financial wherewithal of the Applicant which is to be considered in the context of the fact that he was unemployed as there was a lock out operating in the mill, the reasons which are mentioned in the Affidavit in Support for the condonation of delay can be said to be the plausible reasons for the delay being occasioned.

In our view the judgment of the Apex Court in Byram Pestonji Gariwala's case would not further the case of the Respondent. In the said case in view of the challenge raised to a compromise decree passed in a Suit filed on the original side of this Court, the Apex Court was concerned with the interpretation of the words "in writing and signed by the parties" inserted in Order 23 Rule 3 by amendment in the CPC in the year 1976. The same was in the context of the fact that the Defendant had not signed the compromise terms. The Apex Court having regard to the traditional role of counsel in the common law system and the evil sought to be remedied by Parliament by the

amendment in 1976 held that the legislature cannot in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by Counsel in their cause or duly authorised agents. The Apex Court observed that if a Power of Attorney holder can enter into compromise on behalf of his principal so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. However, the Apex Court sounded a note of caution by observing that ordinarily counsel should not act upon implied authority of parties except when warranted by the exigency of circumstances. In the facts of the said case where the Defendant had not taken any steps to challenge the compromise decree for a period of six years and it was only at the execution stage the Defendant sought to challenge the legality and validity of the decree that the Apex Court did not find any merit in the said challenge. In our view the said judgment in Gariwala's case (supra) would not further the case of the Respondent having regard to the facts of the present case where the Applicant was not a party to the Writ Petition No.539 of 2000, and that he was not aware of any negotiations taking place between the Company and the counsel representing the workmen in respect of the workmen whose matters were pending in different courts.

The order of the Learned Single Judge in Civil Application No.541 of 2004 in Writ Petition No.3641 of 2003 in the matter of Association of Chemical Workers Vs. Jaysnth Anthraquinone Ltd., would also have no

application as the facts are clearly distinguishable. The Learned Single Judge in the facts of the said case wherein the statement of the Learned Counsel appearing on behalf of the workmen to the effect that the said settlement was made on the instructions of their respective clients did not interfere with the settlement which was recorded. The Learned Judge in the said order has recorded the manner in which negotiations took place between the parties ultimately resulting in the Consent Terms. The order adverted to the fact that the Applicant Union admitted that its General Secretary had agreed to a settlement. The facts in the instant case are therefore clearly distinguishable from the facts which were before the Learned Single Judge.

9 Having regard to the fact that sufficient time has elapsed we had directed the parties to explore the possibilities of settlement. For the said purpose, we had deferred the hearing of the above Notice of Motion and Review Petition on two occasions, however, the Learned Counsel for the Respondent No.3 Mr. Jalisatagi informed us that no settlement could be arrived at between the parties.

10 In so far as the Review Petition is concerned, as indicated above, the reasons for the delay and the grounds for review can be said to be overlapping. The Applicant / Review Petitioner cannot be bound by the settlement of which he was not aware of. The right of the Applicant cannot be

taken away in this fashion. It is also required to be noted that the Applicant has not withdrawn the amount deposited by the Company pursuant to the settlement. In our view, therefore, case for review of the order dated 7-3-2005 is also made out. The Notice of Motion is accordingly allowed in terms of prayer clause (a). The Review Petition is also allowed and made absolute in terms of prayer clauses (i), (ii) and (iii), which prayers for the sake of ready reference are reproduced hereinunder:

(i) The Hon'ble Court be pleased to hold and declared that the order passed by the Hon'ble Division Bench consisting of Justice F. I. Rebello and S. P. Kukday, dated 7th March 2005 in W. P. No.539 of 2000 is not applicable to applicant and not binding upon the Applicant.

(ii) The Hon'ble Court be pleased to hold and declare that the settlement dated 25.1.2005 and 30.1.2005 which are at Exhibit "H" and Exhibit "I" are not binding upon the Applicant.

(iii) The Hon'ble Court be pleased to direct the Hon'ble Industrial Court to decide Appeal (IC) No.112 of 2006 on its own merits without relying upon the order of Hon'ble Division Bench consisting of Justice F. I. Rebello and S. P. Kukday, dated 7th March 2005 in W. P. No.539 of 2000, while passing the order on merits.

11 Since the matter would stand relegated back to the Industrial Court to hear the Appeal (IC) No.112 of 2006, the contentions of the parties

are kept open for being urged before the Industrial Court. Since the Appeal is of the year 2006 we direct the IC to decide the same latest by 31-10-2018.

12 Parties to act upon an ordinary copy of this order duly authenticated by the Court Associate / Shirestedar.

Meera
Mahesh
Jadhav
Digitally
signed by
Meera
Mahesh
Jadhav
Date:
2018.08.10
14:32:46
+0530

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]