IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.1664 OF 2016
IN
FIRST APPEAL ST. NO.23939 OF 2015
(DEEPAK SUKHDEO GIRI....VS.. SMT. SATYABHAMA DEVRAOJI LOKHANDE & OTH.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Amit Choube,Adv.h/f.Shri A.S.Manohar,Adv.for Applicant/Appellant.
Shri R.S.Subhedar, Advocate for Respondent No.1.

CORAM : Z.A.HAQ, J.
DATED : APRIL 04, 2018.

The applicant/appellant has filed appeal under Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as "the Act of 1923") to challenge the order passed by the Commissioner under the Employees Compensation Act. The learned Commissioner has recorded finding that the non-applicant/respondent No.1 was an employee of the applicant/appellant at the relevant time.

As per third proviso below sub-section (1) of Section 30 of the Act of 1923, if the employer files an appeal to challenge the award passed by the Commissioner, the memo of appeal should be accompanied by certificate showing that the appellant has deposited the amount payable under the order appealed against.

The applicant/appellant filed appeal without certificate showing payment and it is not disputed that the amount is deposited much after filing of the appeal.

Faced with the situation, the applicant/ appellant has filed Civil Application No.1172 of 2018 seeking permission to withdraw the appeal with liberty to file fresh appeal. The learned advocate for the applicant/ appellant has submitted that the applicant-appellant had filed Civil Application No.1665 of 2016 seeking exemption from depositing the amount as per the impugned award and this Court passed an order on 9th January, 2018 and granted time to the applicant/appellant to deposit the amount and therefore, it has to be treated that the default on the part of the applicant/appellant is condoned.

It is well settled that the third proviso below sub-section (1) of Section 30 of the Act of 1923 is mandatory and the appeal cannot be entertained unless memo of appeal is accompanied with the certificate issued by the Commissioner showing that the amount as per the award appealed against is deposited.

This Civil Application is filed by the applicant-appellant praying that delay in filing the appeal be condoned. As I find that the appeal itself is not maintainable the civil application cannot be considered.

The civil application is **dismissed**. Consequently, the appeal is rejected as not maintainable.

The amount deposited by the applicant/ appellant before the Commissioner along with interest on it, if any, be given to the non-applicant/respondent No.1 (claimant) after 15th June, 2018.

CIVIL APPLN.NOS. 1665/2016, 1666/2016 & 1172/2018.

In view of dismissal of the appeal, the applications praying for exemption from depositing entire amount, grant of stay and withdrawal of the appeal do not survive, hence, all the applications are **disposed**. No costs.

JUDGE

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