

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 167 of 2019

1. Vikas Agrawal, S/o Shri Girdhari Agrawal, Aged About 42 Years, R/o Madhyanagri Chowk, Khaparganj, Juni Line, Bilaspur, Police Station - Civil Line, District - Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Smt. Nisha Yadav, W/o Late Shri Om Prakash Yadav Aged About 32 Years, R/o Village Nirtu, Post- Ghutku, Police Station - Sarkanda, Tahsil - Takhatpur, District- Bilaspur, Chhattisgarh
2. Shubham Yadav, S/o Late Shri Om Prakash Yadav, Minor Through Respondent No. 1, R/o Village- Nirtu, Post- Ghutku, Police Station - Sarkanda, Tahsil - Takhatpur, District - Bilaspur, Chhattisgarh
3. Shubham Yadav S/o Late Shri Om Prakash Yadav Minor Through Respondent No. 1, R/o Village- Nirtu, Post- Ghutku, Police Station- Sarkanda, Tahsil- Takhatpur, District- Bilaspur, Chhattisgarh
4. Executive Engineer, Public Works Department, Division No. 1, Bilaspur, District - Bilaspur, Chhattisgarh
5. Laxman Sahu (Petty Contractor) Opposite Gitanjali City Nagdeo Basti, Before Om Prakash Verma House, Near Transformer, Opposite Hand-pump, Bilaspur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. S.P. Kale, Advocate.
For Resp. No. 1 to 3	:	Mr. P. Acharya, Advocate on behalf of Mr. Anshuman Shrivastava, Advocate
For Respondent No. 4	:	Mr. Somkant Verma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

07.08.2019

1. The challenge in the present Writ Petition is to the order Annexure P-1 dated 04.05.2019, whereby the application under Order 9 Rule 13

of C.P.C filed by the applicant before the Labour Court-Bilaspur has been rejected.

2. Facts of the case is that, the respondents who were claimants No. 1, 2 and 3 before the Labour Court-Bilaspur have moved an application under the Employee Compensation Act. The husband of the Respondent No. 1 and the father of the Respondent No. 2 and 3 met with an accident and suffered grievous injury on 05.06.2008. The said injured person filed a claim before the Labour Court- Bilaspur seeking for compensation for the disability sustained by him. Subsequently, the injured person succumbed to the injuries and the Respondent No. 1, 2 and 3 the legal heirs of the deceased injured person were brought on record and who were pursuing the case thereafter and notices were issued to the respondents.
3. The petitioner herein was also one of the respondents and it was contended by the claimants that the deceased worker was working under the petitioner who had received some contract from the State Department. Notices were issued, which according to the petitioner has not been properly served upon him and yet the Labour Court proceeded *ex-parte* against him and passed an award on 05.11.2016 (Annexure P/3).
4. The award was immediately communicated to the petitioner who is said to have immediately filed an application under Order 9 Rule 13 of the C.P.C seeking for setting aside of the *ex-parte* award. It is this application which stands rejected by the impugned order dated 04.05.2019.

5. At the outset, this Court is of the opinion that, the present Writ Petition shall not be maintainable for the reasons that the original order which has been passed ie. *ex-parte* award on 05.11.2016 is by itself appealable under Section 30 of the Employees' Compensation Act. This Court is of the opinion that, even if the application under Order 9 Rule 13 is rejected, the recourse available to the petitioner is by preferring an appeal under Section 30. The writ petition, therefore, in its present form is not maintainable deserves to be and is accordingly rejected.
6. Moreover, from the perusal of the impugned order, it reflects that the Labour Court-Bilaspur has proceeded *ex-parte* after a couple of registered notices which were issued to him, came back with a note that the petitioner is out of State. Thereafter, the paper publication was also made in the local newspaper having wide circulation and it is only thereafter that the Labour Court-Bilaspur had proceeded *ex-parte* against him.
7. Reserving the rights of the petitioner to avail other remedies available to him under the Act. The present Writ Petition stands rejected.

Sd/-
(P. Sam Koshy)
Judge