

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4090 OF 2017

M/s. Asahi India Glass Ltd.

.. Petitioner

through its Regional Director (West)

Vs.

Float Glass Employees Union

.. Respondent

Mr. S. S. Mutalik for the Petitioner.

Ms. Bhavna Mhatre i/b. Ms. Kranti L. C. for Respondent no. 1.

CORAM : A.K. MENON, J.

DATED : 22nd JANUARY, 2019.

P.C. ,

1. By this petition the petitioner has challenged an order dated 22nd March, 2017 allowing an application Exh U-46 by which the Industrial Court extended time to carry out amendment subsequent to application vide Exhibit U-33 dated 19th August, 2016.

2. The challenge in the present case is only to the order granting extension. There is no challenge to the order dated 19th August, 2016 allowing amendment per se. The only controversy is whether time ought to have been extended in the facts of the case. Learned counsel for the petitioner submits that in view of the limitation under section 148 of the Civil Procedure Code, 1908 time could not have been extended by the Industrial Court.

3. Mr. Mutalik submitted that the respondent were negligent inasmuch as after the amendment was allowed vide order dated 19th August, 2016 the respondent did not carry out amendment and they filed an application on 25th August, 2016 copy of which appears at Exhibit F to the petition. The petitioner in its application contended that it was aggrieved by the order and was intending to approach this Court. Although such application was filed before the Industrial Court, it is not in dispute that no challenge was in fact filed against order allowing amendment.

4. The reply to the application filed by the respondent contended that the respondents were confused at the material time and since the petitioners had contended that they would be filing an appeal and therefore the order dated 19th August, 2016 was complied with. Amendment was not carried out. It is thereafter on the same date that the respondent sought extension of time for carrying out amendment and which came to be granted vide the impugned order.

5. Learned counsel for the respondent submits that the only reason for delay in the instant case was the proposed challenge to the first order dated 19th August, 2016 that they were awaiting outcome of the proposed challenge and therefore had not sought extension of time and not carried out amendment within the time.

6. Having heard learned counsel for the parties, in my view the substance of the amendment application is not in dispute. Amendment has been allowed. There is no challenge to proposed amendment. As far as delay is concerned, I am inclined to condone the delay subject to payment of costs. Accordingly, I pass the following order :

- (i) Subject to payment of costs of Rs.5000/- within a period of eight weeks from today impugned order dated 22nd March, 2017 is set aside.
- (ii) If costs are not paid this order will stand vacated and rule in the petition will be absolute.
- (iii) Petition disposed of in the above terms.

(A.K. MENON,J.)