

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.347 OF 2018
WITH
CIVIL APPLICATION NO.736 OF 2017
IN
FIRST APPEAL NO.347 OF 2018**

Sheshmani Ramchandra Pandey ...Appellant
Versus
Ramburi Varma and Anr. ...Respondents

.....

Ms G. Geetha I/b. Mr. H. Kumar Vaidyanathan for the Appellant.
Ms Jaya Pawar for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 22nd FEBRUARY, 2019.

P.C.:-

Heard Ms S. Geetha, the learned counsel for the Appellant
and Ms Jaya Pawar, the learned counsel for the Respondents.

2. The Appellant herein has challenged the order dated 5/2/2015 passed in Misc. Application (WCA) No.545/I-138/2013 whereby the learned Judge has dismissed the application for setting aside the order dated 1/12/2003 passed in (WCA) No.601/B-108/97.

3. The Respondents had filed an application under Workmen

Compensation Act, bearing (WCA) No.601/B-108/97. The said application was dismissed for default on 30th September, 2002. The Respondent thereafter filed an application for restoration of the said application. The said application was allowed by order dated 1/02/2003 and as a consequence thereof the application No. (WCA) No.601/B-108/97 was restored.

4. The application No. (WCA) No.601/B-108/97 proceeded exparte and was allowed by judgment and order dated 1/12/2003. It is seen that the Appellant did not seek to set aside the exparte judgment dated 1/12/2003 but filed an application to set aside the exparte order dated 1/2/2003, whereby the Miscellaneous Application No.(WCA) No.545/I-138/2013 was restored. The records indicate that the Respondent had also filed recovery proceedings to recover the amount under the award. The application filed by the Appellant came to be dismissed by the learned Judge by the impugned order dated 5/2/2015. Being aggrieved by this order the Appellant had preferred this appeal.

5. The Appellant claims that he was not served with a notice in the restoration application. He contends that the restoration

application as well as the application for compensation was heard and finally decided without issuing any notice and without hearing him in the matter. The Appellant further claims that he was not served in the recovery proceedings and that till 28.8.2012 he had no knowledge of the order dated 1/2/2003, 1/12/2003 or filing of the recovery proceedings. The learned Judge has not considered the grounds raised by the Appellant. He has not recorded findings regarding service of notice on the Appellant either in the restoration application or in recovery proceedings, but has observed that *“it is the practice of the Court to hear other side before passing the order. When such order came to be passed thereby restoring the matter shows that, the other side must have heard or at least summons must have been duly served....Further, in this recovery proceeding the recovery certificate also came to be issued. This also shows that the Applicant was aware of the fact that, the main compensation proceeding came to be disposed off.”*

6. The impugned order thus, indicates that the learned Judge has presumed that the notice must have been served on the Appellant, without making any attempt to verify the records and ascertain whether the notice was in fact served or not. The impugned order, which is based on surmises and conjectures cannot be sustained.

Hence, order dated 5/2/2015 is set aside. Matter is remanded to the 1st Labour Court with directions to decide the application afresh after hearing the respective parties.

7. The first appeal stands disposed of.

8. In view of disposal of the first appeal, the civil application does not survive and hence stands disposed of.

9. Both parties are directed to appear before the Labour Court on 11/3/2019.

10. At this stage, the learned counsel for the Appellant states that the Appellant shall file an application to amend the Misc. Application (WCA) No.545/I-138/2013 and /or will file a fresh application for setting aside the exparte judgment. Any such application, if filed by the Appellant, shall be decided on its own merits.

(SMT. ANUJA PRABHUDESSAI, J.)