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

WRIT PETITION NO.11023 OF 2018

Master Handlers Private Limited .. Petitioner
Vs.
Sandeep Tukaram Kumbhar .. Respondent

AND

WRIT PETITION NO.10987 OF 2018

Master Handlers Private Limited .. Petitioner
Vs.
Gorakhnath Sing .. Respondent

Mr. Varun Joshi I/b. Chetan Alai for the petitioner.
Mr. Prashant Kamble I/b. A.S. Rao for the respondent.

**CORAM : A.K. MENON, J.
DATED : 28TH JANUARY, 2019.**

P.C. :

1. These two petitions seeks to challenge similar orders passed in applications for restoration of Reference (IDA)nos.252 of 2014 and 251 of 2014. The applications were made by the present petitioners for setting aside the award dated 6th May, 2016 which according to the petitioners was an exparte award. Before the Labour Court, it is contended that the petitioners were a small private limited company and had employed about 20 persons. They are complying with all

labour laws regarding labourers and workmen and that the company was unaware of the passing of the award dated 6th May, 2016. In the application for setting aside, it is contended that the HR Manager had received notice of the reference however, he had failed to place it before the directors and therefore the company was unaware of the same.

2. It is the case of the petitioners that both the respondents were relieved pursuant to payment of retrenchment compensation. The challenge is on the basis that since the petitioners also unaware of the pendency of the reference by reasons of the HR Manager for having not placed before the Director/Directors the matters were went unrepresented and it is only when the respondents approached the petitioners, they came to learn of the same. Thereupon they moved an application on 1st September, 2016. The application was opposed by the respondents pointing out the fact that there was no justification in the application and the reasons given by the applicants cannot be believed inasmuch as no particulars are given as to when they learnt of the award which they described as *exparte*.
3. According to the respondents, the petitioners were aware of the pendency of the reference since they were a company and service of

notice is admitted. However, it is their contention that they were unaware of the pendency of the reference owing to the fact that HR Manager left the services of the petitioner organization. It is submitted by the respondents that the reasons cannot be believed and once it is accepted the fact that notice was served, it was incumbent upon them to enter appearance which they admittedly did not do.

4. On behalf of the petitioners it was urged that they came to learn of the award only after it was published. The date of publication is admittedly 2nd August, 2016 and the impugned order proceeds on the basis that the applicant/petitioners had knowledge of the exparte award prior to its publication. This contention found in favour with the Labour Court which in paragraph 11 has come to the conclusion that the petitioner had knowledge of the exparte award prior to its publication. There is no justification in having arrived at such a conclusion. It is for these reasons that the application for restoration rejected.
5. In the course of submissions, the learned counsel for the petitioner also pointed out that retrenchment compensation had been paid to the two respondents in these matters. He relied upon the communication dated 25th February, 2014 addressed by the petitioners to these two

respondents from which it appears that cheques for Rs.42,038/- and Rs.52,020/- respectively had been paid over and these amounts had been paid over in full and final settlement and that along with calculation, service certificate and relieving letter. These communications were not before the Courts below.

6. Having come to the conclusion, there is no justification in having arrived at a conclusion that the petitioner was aware of the *ex parte* award, it will be appropriate that the matter is remanded. However, having considered the conduct of the petitioners, this order of remand will have to be allowed subject to payment of costs.
7. On a query from the learned counsel for the respondent, as to whether such compensation has been received, the learned counsel for want of instructions was unable to confirm. However, the statement made on behalf of the petitioners is to the effect that the amount of compensation has been received by the respondents under the cheques handed over to them. This statement is accepted on the basis that such compensation has been paid, a fact that the Labour Court will now have to verify. It will be appropriate that the petitioner is allowed to agitate all these aspects before the Labour Court. Accordingly I pass the following order;

- (i) The impugned order dated 1st August, 2018 in the above writ petitions are set aside.
- (ii) Application (IDA)nos.37 of 2016 and 36 of 2016 are allowed subject to payment of costs of Rs.50,000/- to the respondents in each of these matters. Costs shall be condition precedent.
- (iii) Costs shall be paid on or before 15th February, 2019 to the respondents failing which the petition will stand dismissed.
- (iv) If costs are paid, this order setting aside the impugned orders will come into effect and the matter shall be listed before the Labour Court on 25th February, 2019 for directions.
- (v) Since the contention of the petitioners that it is an exparte award and they have not opportunity to defend it, written statement, if any, shall also be filed on or before 25th February, 2019 along with all documents.
- (vi) Petitions disposed in the above terms.

(A.K.MENON,J.)