

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

CIVIL APPLICATION (F) Nos. 176 OF 2019, 177 OF 2019 &
178 OF 2019

IN

FIRST APPEAL STAMP No. 126051 OF 2018

Digambar Bhaodu narkhede

VS.

Nitin Saoji Dode and anr.

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. A. P. Wachasundar, Advocate for appellant.
Shri. Mahesh Rai, Advocate for respondent No.1.

CORAM : Manish Pitale J

DATED : 16.09.2019

This is an application seeking condonation of delay of one day in filing accompanying appeal.

2. For the reasons stated in the application, the same is allowed and delay is condoned.

CIVIL APPLICATION (F) Nos. 177 OF 2019

This is an application filed on behalf of the appellant seeking waiver from depositing amount granted by the Commissioner. It is submitted that although under proviso to Section 30 of the Employees' Compensation Act, 1923, it would be mandatory to deposit such an amount

and to place on record certificate to that effect for consideration of the accompanying appeal, in the peculiar facts of the present case the said requirement deserved to be waived.

2. It was further submitted that a perusal of finding given by the Commissioner in the impugned order would show that only respondent No.2 was found to be the employer of the respondent No.1, and that therefore, the present application for waiver deserved to be granted.

3. Although the Commissioner has indeed rendered finding that the respondent No.2 was the employer of respondent No.1, in paragraph 18, it has been specifically found as per the appreciation of facts by the Commissioner that the appellant and respondent No.2 both were employers of the respondent No.1. It appears that the Commissioner, on the basis of such appreciation of the material on record, finally directed the appellant as well as respondent No.2 to jointly and severally pay the amount awarded to respondent No.1.

4. Considering the findings rendered by the Commissioner on issues No. 1 to 4 and the specific finding rendered in paragraph 18 of the impugned judgment and order to the effect that the appellant and respondent No.2 both were

employers of respondent No.1, it would be in the interest of justice that the present application is partly allowed.

5. Accordingly, the application is partly allowed and the appellant is granted waiver of 50% of deposit of the amount awarded by the Commissioner. Accordingly, the applicant/appellant shall now deposit 50% of the amount awarded by the Commissioner in the impugned judgment and order within a period of eight weeks before the Commissioner and place on record a certificate to that effect before this Court.

6. The application stands disposed of.

CIVIL APPLICATION (F) Nos.178 OF 2019

This is an application seeking stay to the impugned judgment and order. Notice was issued in this application on 14.01.2019 and the respondent No.1 has entered appearance through counsel. Respondent No.2 is said to be represented counsel, but none has appeared on behalf of the said respondent.

2. In view of the fact that the application seeking waiver of deposit (Civil Application (F) No.177/2019) has been partly allowed by this Court, on deposit of 50% of the amount awarded

by the Commissioner, by the applicant/appellant herein within the aforesaid period of eight weeks, there shall be stay to the effect and operation of the impugned judgment and order towards liability of the applicant/appellant to the extent of 50% of the amount.

3. Application stands disposed of.

FIRST APPEAL No. _____/2019

Issue notice for final disposal on the following substantial question of law :-

“ Whether the appellant herein could be foisted with liability to pay compensation under the provisions of Employees' Compensation Act, 1923, when the Commissioner/Labour Court in the impugned judgment and order gave findings as regards issue Nos.1 to 4, specifically to the effect that only respondent No.2 was the employer of respondent No.1 ? ”

2. Notice shall be returnable in eight weeks. Shri. Mahesh Rai, learned counsel waives notice on behalf of respondent No.1.

JUDGE