

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3803/2018
 (RAGHUNATHSINGH MAHABALISINGH GAHERWAR & OTHERS **VERSUS** SHAKTISINGH
 SHEKHAVAT & ANOTHER)

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

Court's or Judge's orders

 Shri S.A. Kalbande, counsel for petitioners.
 Mrs. R.S. Sirpurkar, counsel for respondents.

CORAM : A.S. CHANDURKAR, J.
DATE : JULY 25, 2019.

The challenge raised in the present writ petition is to the order dated 12.03.2018 passed by the learned Commissioner under the provisions of the Employees Compensation Act, 1923 (for short, 'the said Act') condoning the delay in filing the application for setting aside the *ex-parte* judgment dated 01.11.2014. Further challenge has also been raised to the order passed on 14.06.2017 by which the respondent nos.1 and 2 were permitted to carry out the amendment as per application at Exhibit 29 and the order dated 19.12.2017 thereby rejecting the application filed below Exhibit 39 seeking dismissal of the said proceedings.

The facts relevant are that the petitioners are the original claimants who had filed an application under Section 22 of the said Act seeking compensation from the respondents herein on account of accidental death of the son of the petitioner nos.1 and 2. According to the petitioners, the son of the petitioner nos.1 and 2 was working as a labour as he was so engaged by the contractor on

the building site owned by the respondent nos.1 and 2. In the said proceedings, the respondents herein as well as the contractor were duly served but they failed to contest the proceedings. On 06.03.2013, the matter proceeded *ex-parte* against them. After considering the material on record, the learned Commissioner directed payment of compensation of Rs.8,47,160/- as compensation. This amount was directed to be paid by the respondents treating them to be principal employers. When this order dated 01.11.2014 was sought to be executed, the respondents on getting knowledge of the said proceedings filed an application for setting aside the *ex-parte* judgment alongwith an application for condonation of delay. In those proceedings, the respondents moved an application below Exhibit 20 praying that they be permitted to amend the application by interchanging the names of the parties. The learned Commissioner by his order dated 31.01.2017 allowed that application and permitted the respondents to carry out the amendment. Since it was noticed by the respondents that the amendment had not been carried out properly and the name of the contractor had not been duly typed, they moved an application below Exhibit 29 seeking permission to carry out the amendment properly. This application was allowed on 14.06.2017. Thereafter, the petitioner herein filed an application below Exhibit 39 seeking dismissal of the proceedings on the ground that the respondents while carrying out the amendment had manipulated the record and had included the name of the contractor as a party to the said proceedings. This application filed below Exhibit 39 came to be rejected by the learned Commissioner by the order dated 19.12.2017. After considering the grounds that were put forth for

condoning the delay, the learned Commissioner was pleased to allow that application and by the order dated 12.03.2018 condoned the delay. Being aggrieved by the orders passed below Exhibits 20, 29 and 43, the original claimants have filed the present writ petition.

Shri S.A. Kalbande, learned counsel for the petitioner submitted that the learned Commissioner erred in allowing the application that was filed below Exhibit 29. The application seeking dismissal of the proceedings ought to have been allowed by accepting the ground made out in Exhibit 39. In any event, it was submitted that the delay in seeking setting aside of the *ex-parte* judgment was not liable to be condoned. He submitted by referring to the records of the case that the name of the contractor was not mentioned in the application for amendment at Exhibit 20. Though the application below Exhibit 20 was allowed without there being any permission to include the name of the contractor, the same was sought to be incorporated by subsequently seeking such permission. According to him, since the name of the contractor was not mentioned in the application at Exhibit 20, it was not open for the respondents herein to add his name in the proceedings for setting aside the *ex-parte* judgment. Without there being any permission to include the name of the contractor, the same was sought to be incorporated by subsequently seeking such permission. It was urged that since the name of the contractor was not mentioned in the application at Exhibit 20, it was not open for the respondents to add his name in the proceedings for setting aside the *ex-parte* judgment. Without there being any proper order in that regard, his addition had been directed. It was then submitted that the

respondents were duly served in the proceedings filed under Section 22 of the said Act and despite service they had remained absent. The learned Commissioner was not justified in condoning the delay by accepting the grounds put forth by the respondents. Merely with a view to delay the execution of the award that was initially passed on 01.11.2014, the respondents had prayed for setting aside the *ex-parte* decree. By condoning the delay grave prejudice was caused to the claimants. He relied upon the decisions in *Pundlik Jalam Patil (D) by Lrs Versus Exe. Eng. Jalgaon Medium Project & Another* [2008(13) Scale 773], *P.K. Ramchandran Versus State of Kerala & Another* [AIR 1998 SC 2276], *Varhyan Narendra Singh Chhatwal since (D) thr. Lrs Versus Kala Narendra Singh Chhatwal & Others* [2015 (6) All MR 324] and *Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy & Others* [(2013) 12 SCC 649]. On these counts, the impugned orders were liable to be set aside and the award dated 01.11.2014 ought to be permitted to be executed.

Mrs. R.S. Sirpurkar, learned counsel for the respondents supported the impugned orders. It was submitted that merely by condoning the delay in filing the application for setting aside the *ex-parte* order, no prejudice was caused to the claimants. The *ex-parte* judgment was yet to be set aside and the claimants had full opportunity to oppose the same. She submitted that in the application that was moved below Exhibit 20, the name of the contractor had not been mentioned through oversight. It was rightly noticed by the learned Commissioner that the contractor was not a stranger to the proceedings. By allowing the application at Exhibit 29 such permission was granted. There was no question of

manipulating the records as alleged. The objections raised were frivolous in nature and by raising the same the adjudication of the proceedings had been delayed. It was further submitted that the respondents were not duly served in the proceedings under Section 22 of the said Act and hence an opportunity to contest the proceedings deserves to be granted. Hence, no interference was called for with the impugned orders.

I have heard the learned counsel for the parties at length and I have perused the records of the case. It is seen that after the learned Commissioner allowed the application for grant of compensation on 01.11.2014, the respondents on getting notice of the same in the execution proceedings sought to apply for setting aside the *ex-parte* judgment. In that application as filed the contractor had not been impleaded. The respondents therefore initially moved an application below Exhibit 20 by which the names of the respective parties were sought to be interchanged. The applicants were sought to be shown as respondents and vice versa. At that stage, the name of the contractor was not indicated in the cause title. This application at Exhibit 20 came to be allowed. At that stage it was not noticed that the contractor was not a party. It is only while carrying out the amendment that the respondents noticed absence of the name of the contractor as a party to the proceedings. Hence, the application at Exhibit 29 was moved and after hearing the petitioners herein that prayer was granted. The learned Commissioner observed that by permitting such amendment, the controversy between the parties could be resolved. According to the petitioners the amendment as initially granted was not appropriately carried out and hence dismissal of the

proceedings was sought. It is seen that the respondents have in clear terms indicated that the name of the contractor had not been mentioned in the application at Exhibit 20. Only after realizing the same, the request was made by moving another application at Exhibit 29. It is found that the learned Commissioner committed no error in allowing both the applications as said orders would have enabled a proper and complete adjudication of the applications as made. It is to be kept in mind that the respondents were seeking setting aside of the *ex-parte* award and hence addition of all the parties to that award was necessary. It has also been rightly observed by the learned Commissioner that the contractor was not a stranger to the said proceedings as he was a party to the initial application for grant of compensation that was moved by the petitioners. Moreover, said contractor was exonerated from paying any compensation and it is only the respondents as principal employers who were liable to pay that amount.

Insofar as the prayer for condoning delay in seeking setting aside of the *ex-parte* judgment is concerned, the learned Commissioner found that an amount of Rs.2,11,800/- had been deposited by the respondents herein in the present proceedings. It has been further observed that the question whether notice of the proceedings under Section 22 of the said Act was properly served or not was not considered at that stage and the same was an aspect to be considered while adjudicating the question whether the *ex-parte* judgment was liable to be set aside. By condoning the delay, an opportunity to substantiate the application for setting aside the *ex-parte* judgment was given to the respondents. It is found that the discretion exercised by the learned Commissioner in that regard is

after considering the entire material and by giving cogent reasons. In the facts of the present case, the ratio of the decisions relied upon do not support the case of the petitioners. I therefore do not find any reason to interfere with that order.

Accordingly, it is found that there is no case made out to interfere either with the orders passed below Exhibits 29 and 39. Similarly, the order passed below Exhibit 43 condoning delay in filing the application for setting aside the *ex-parte* judgment also does not call for any interference. However, in the facts of the case, the proceedings in E.C.A. No.C-127 of 2012 alongwith the application for setting aside the *ex-parte* judgment are expedited. The said application for setting aside the *ex-parte* judgment be adjudicated upon expeditiously and preferably by the end of December-2019. All contentions of the parties on merits are kept open. The Record & Proceedings be sent to the Labour Court forthwith.

With these observations, the writ petition stands dismissed. No costs.

JUDGE

APTE