

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

FIRST APPEAL NO. 913/2017

Ranjeet Khadakkar Vs. Smt. Kesar and Ors.

WITH

FIRST APPEAL NO.1222/2017

Ranjeet Khadakkar

Vs.Smt. Surekha @ Suryakanta Raut and Ors.

Office Notes, Office Memoranda of Coram, Appearances, court's orders of directions and Registrar's orders	Court's or Judge's orders
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Ms Kalpana K. Pathak, Advocate for the Appellant in both the Appeals.

Mr S.V. Purohit a/w Ms. Mohini A. Sharma, Advocate for the Respondent Nos 6 & 7 in First Appeal No. 913 of 2017 and for Respondent Nos.7 & 8 in First Appeal No. 1222 of 2017.

CORAM : NITIN W SAMBRE, J.

DATE : SEPTEMBER 25, 2019.

. Heard both the parties. Both these Appeals are taken up for final disposal by consent of the learned counsel for both the parties.

2. The Appellant herein is not a principal employer pursuant to the provisions of Section 4-A of the Employee's Compensation Act, 1923 (*hereinafter be referred as 'the Act' for the sake of brevity*).

3. It is claimed by the Appellant that before ordering penalty, no show cause notice as provided under Section 4-A(3) of the Act was issued to the Appellant, who was Respondent No.3 to the claim petition.

4. Drawing support, from the judgment of this Court in the matter of **Lalitha Equipments Vs. Rameshwar Ragho**

Chauhan and Ors. reported in 2016 (1) Bom.C.R. page 599, the learned counsel for Appellant submits that since the order of imposing penalty is contrary to the proviso to sub-section 3 of Section 4-A of the Act, same is not sustainable in law.

5. While opposing the claim, the learned counsel for the Respondent i.e. Railways, who is the principal employer, submits that if the pleadings of the Appellant in the written statement coupled with issues, which are answered by the Commissioner, if appreciated, there is material to infer that the Appellant was having constructive notice about the Commissioner invoking above provisions.

6. Learned counsel for the Respondent Nos. 6 and 7 i.e. principal employer submits that a notice calling upon the Appellant to pay the penalty was already served. As such, the dismissal of the Appeal is sought.

7. Considered the rival submissions.

8. The issue as regards whether the notice is required to be issued against employer invoking clauses a and b of sub-section 3 of section 4(A) of the Act is mandatory is no more *res integra*.

9. The learned counsel for the Appellant has rightly relied upon the Judgment in the matter of **Lalitha** (*cited supra*), in support of the contention that there should have been show cause notice before passing an order under Section 4A of the Act about penalty against the Appellant.

10. In view of above, findings recorded by the Workman's

Compensation Commissioner to the extent of observations made while answering issue No.5 in para 19 of the impugned Judgment are not sustainable and are liable to be quashed and set aside to that extent only. Rest of the Judgment is maintained against the Appellant.

11. The Appellant shall consider these observations in para 19 of the impugned Judgment as show cause notice and shall submit its reply to the Commissioner Workmans' Compensation, Labour Court, Gondia in proceeding Nos. 03/2013 and 04/2013 within a period of 4 weeks from today.

12. Upon submission of such reply, the Workman's Compensation Commissioner shall pass an appropriate order within a period of 8 weeks thereafter, after hearing the appellant.

13. In case, if the reply as observed hereinabove is not submitted by the Appellant before the Commissioner as undertaken, it shall be open for the Commissioner to decide the claim for award of penalty without waiting for or without granting further time to the Appellant for compliance of the same.

14. Both the Appeals stand partly allowed in above terms.

(NITIN W SAMBRE, J.)