

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO No.1447 of 2014 (O&M)

Date of decision: 07.03.2019

MAHADEV RISE MILL HODAL

... Appellant

Versus

TULI RAM & ANR

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashok Kaushik, Advocate for the appellant.

Mr. JS Hooda, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against orders dated 12.02.2014 and 28.11.2011 passed by the Commissioner under the Employees Compensation Act, 1923 whereby the application under Order 9 Rule 13 read with Section 151 CPC for setting aside ex parte order dated 28.11.2011 was dismissed and ex parte award was passed respectively.

Counsel for the appellant would argue that Tuli Ram and another filed an application for grant of compensation on account of death of Smt. Sheela Devi during the course of employment with Mahadev Rice Mills, Hodal. The appellant filed reply/written statement and raised a specific plea that a sum of Rs.3 lakh has already been paid to the claimants and remaining compensation has been deposited with the Commissioner. It is further submitted that during the course of proceedings before the Commissioner, there was no representation on behalf of the appellant and as a consequence, ex parte proceedings were initiated that culminated in ex parte award dated 28.11.2011 fastening liability to the tune of Rs.3,32,678/- including the amount of Rs.32,700/- deposited by the appellant on 24.05.2008. It is further argued that the appellant was not aware of passing of the ex parte award until he received summons from the Commissioner in execution proceedings and thereafter without loss of time, application for setting aside ex parte order was filed but the same has been wrongly dismissed. It is further argued that as the appellant has already paid a sum of Rs.3 lakh to the claimants based upon documentary evidence, a serious prejudice shall be caused to the appellant in case the ex parte award is not set aside and an opportunity to adduce evidence to substantiate the

averments raised in the reply is not provided. He has prayed that he may be allowed one opportunity to prove his defence plea, may be, subject to payment of costs to the respondents/claimants.

Counsel representing respondent No.1/claimant has supported order dated 12.02.2014 with the submissions that application for setting aside ex parte award is clearly barred by limitation having been filed in March, 2013 to set aside an order passed in November, 2011. It is further argued that plea of the appellant with regard to payment of Rs.3 lakh to the claimants is patently false and documents have been created to escape liability to pay compensation qua death of Sheela Devi in the course of employment.

I have heard counsel for the parties, perused the paper book particularly annexures appended with the appeal.

Be that as it may, it is undisputed position of the case that the appellant caused appearance in the proceedings before the Commissioner, filed reply to contest claim of the respondents/claimants but during the course of further proceedings, the appellant absented from the proceedings resulting in passing ex parte order dated 28.11.2011 whereby compensation to the tune of Rs.3,32,678/- has been assessed to be paid with interest @12% per annum in case the appellant fails to pay remaining amount of Rs.2,99,978/- within 30 days of the award. The application for setting ex parte award dated 28.11.2011 was filed on 14.03.2013 i.e. after a period of 1 year and approximately 4 months.

Article 123 of the Limitation Act, 1963 prescribes period of 30 days to set aside a decree passed ex parte or to rehear an appeal decreed or heard ex parte. A relevant extract therefrom reads thus:-

To set aside a decree passed ex parte or to re-hear an appeal decreed or heard ex parte.	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
Explanation.—For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service.		

The period of 30 days is to be reckoned from the date of decree

where the summons or notice was duly served but the same would be 30 days from the date of knowledge of the decree if the notice was not duly served. In the case at hand, as the appellant caused appearance before the Commissioner, filed the written statement and contested the proceedings, prescribed period of 30 days is to be reckoned w.e.f. the date of ex parte order i.e. 28.11.2011. Since application filed by the appellant to set aside ex parte order is clearly barred by limitation and there is nothing on record suggestive of the fact that an application was filed by the appellant seeking condonation of delay, it is difficult to accept contention of the appellant that the ex parte order is liable to be set aside with an opportunity to the appellant to prove his contentions raised in the written statement. No sooner plea for setting aside ex parte order dated 28.11.2011 is rejected, nothing survives for consideration as counsel for the appellant has not advanced any arguments qua merits of the award.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed. The amount of Rs.1 lakh deposited by the appellant in the Registry of the Court is ordered to be released in favour of the claimants towards part payment of the awarded amount.

07.03.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No