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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :- 01.10.2019

+ W.P.(C) 10696/2019 & C.M. No.44209/2019

SH. PUSHPENDER SINGH CHAWLA Petitioner
Through: Mr.Aditya Singh with Ms.Deepti
Singh Sodhi & ms.Mehak Nakra,
Advs.

versus

COMMISSIONER EMPLOYEES COMPENSATION ACT AND
ANR. Respondents
Through: Mr.Kaustubh Anshu Rai, Adv. for
R-1.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition assails the order dated 02.08.2019 passed by the Commissioner under the Employees Compensation Act 1923 (hereinafter referred to as 'the Act') rejecting the petitioner's application dated 05.03.2019 filed under Sections 12 and 13 of the Act seeking recovery of Rs.12,00,641/- along with interest at the rate of 7.5% per annum from respondent no.2 i.e. the contractor.
2. The petitioner and respondent no.2/contractor had entered into a property development agreement for construction of a residential

house at A-57, Ashok Vihar, Phase-2, New Delhi. During the construction of the building on 07.10.2011, one labourer Shri Rakesh Kumar suffered injuries and ultimately succumbed to his death on 01.01.2012. Consequently, a claim petition was filed by the parents of the aforesaid workman under Section 22 of the Act which came to be allowed vide an order dated 31.10.2013 by the Commissioner.

3. Vide the aforesaid order, the Commissioner while directing the petitioner to deposit a sum of Rs.7,06,259/- along with interest at the rate of 12% from the date of accident till the date of realisation, held that the petitioner (respondent no.1 before the Commissioner) would be at liberty to recover the awarded amount from respondent no.2. The petitioner assailed the aforesaid order before this Court by way of FAO No.208/2015 wherein vide order dated 19.01.2018, this Court once again reiterated that the petitioner would be entitled to recover the total amount of Rs.12,00,641/- along with interest at the rate of 7.5% per annum from the Contractor, for which purpose, he would be at liberty to initiate execution proceedings in accordance with law.

4. Armed with this order, the petitioner instead of initiating execution proceedings, once again filed an application under Sections 12 and 13 of the Act which came to be rejected vide the impugned order. The learned Commissioner while rejecting the petitioner's application has observed as under:-

“4. As per the available records there are no documents showing contract between respondent no.1 and respondent no.2 and even if there was any verbal/ written contract it is for respondent no.1 to recover from respondent no.2 based

on terms and conditions of the agreement, if any, before suitable forum.

5. Application dated 05.03.2019 filed by the applicant under section 12 & 13 of the Employee's Compensation Act 1923, for recovery of compensation amount Rs.12,00,641/- alongwith interest @ 7.5% per annum from respondent no.2 stands rejected.”

5. Impugning the said order, the present petition has been filed by the petitioner, who was respondent no.1 before the Commissioner. Learned counsel for the petitioner, while conceding that the appropriate remedy for the petitioner would be to initiate execution proceedings in terms of Section 31 of the Act, submits that the present petition has been necessitated as the Commissioner while rejecting the petitioner’s application and granting liberty to the petitioner to take action before any suitable forum has disregarded the findings in the earlier order i.e. 31.10.2013 passed by the Commissioner as also the directions given by this Court vide its order dated 19.01.2018 in FAO No.208/2015. He submits that the petitioner will initiate appropriate execution proceedings but the observations of the Commissioner as recorded in para 4 of the impugned order will cause grave prejudice to the petitioner as the respondent no.2 is likely to use the said observations to contend that his liability is yet to be determined, even though his liability stands already determined not only by the Commissioner’s order dated 31.10.2013 but also by this Court on 19.01.2018.

6. Learned counsel for the respondent no.1, who appears on advance notice, is unable to dispute the aforesaid position. He

however submits that the Commissioner was justified in passing the impugned order as the petitioner was not entitled to file any application seeking compensation under Sections 12 and 13 of the Act and his only remedy was to initiate execution proceedings in accordance with law.

7. I have carefully considered the submissions of the learned counsel for the petitioner and perused the record. In my view even though the Commissioner under the impugned order was justified in rejecting the petitioner's application as the said application was not maintainable, there was absolutely no occasion for the Commissioner to pass any observations as contained in para 4 of its order. There is merit in the petitioner's contention that these observations virtually amount to placing an onus on the petitioner to once again demonstrate his entitlement to recover the amount from respondent no.2, which was not permissible in the light of the order passed by this Court on 19.01.2018 in FAO No.208/2015 especially when the Commissioner was not entertaining the application on merits.

8. Thus, while holding that there is no infirmity in the impugned order rejecting the petitioner's application under Sections 12 and 13 of the Act, the petitioner is granted liberty to initiate recovery proceedings against respondent no.2 in accordance with law. It is however, clarified that the observations at para 4 will not be construed as any finding and will not in any manner influence the outcome of the execution proceedings which the petitioner may initiate in accordance with law.

9. The writ petition is accordingly disposed of with the aforesaid clarification along with the pending application. **DASTI.**

REKHA PALLI, J

OCTOBER 1, 2019

gm

