

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5332 OF 2019

Nahar Construction Pvt. Ltd.

.... Petitioner

Versus

Sanjay Pandurang Marathe

.... Respondent

.....

Ms. Sonal a/w Mr. Archit Chaturvedi i/b F.F. & Associates for the
Petitioner

CORAM : S.C. GUPTE, J.

DATE : 29 JANUARY 2020

P.C. :

. Heard learned Counsel for the Petitioner. The Respondent is absent despite notice.

2. This writ petition challenges an exparte award passed by the Labour Court at Mumbai in a reference made to it by the Appropriate Government under the Industrial Disputes Act, 1947. The subject matter of reference concerned the alleged termination of the Respondent (original second party) by the Petitioner herein (original first party).

3. It was the case of the second party that he was working as a 'store keeper' with the first party from 1 July 2011; the first party had illegally terminated his services on 7 September 2015. It was his case that when a dispute was raised by him before the Labour Officer, during the course of conciliation proceedings, he was instructed by the first party to

resume duty and hand over his charge. It was his grievance that when he resumed duty accordingly and handed over the charge, the first party refused to pay his salary and consequently, he was illegally and orally terminated on 7 September 2015. It was, on the other hand, the case of the first party that in the course of his employment with the first party, the second party was in-charge of a godown as a store keeper. A theft took place in the shop under suspicious circumstances. Only one particular valuable product, which was kept in separate places and separate boxes in the godown, was found to have been stolen. This was followed, first, by the second party's refusal to submit the concerned stock register and later, to co-operate with the police authorities for investigation of the theft. As the Respondent (second party) failed to reconcile the materials with the record, the management of the Petitioner (first party) withheld his salary and he was asked to reconcile the stock statement. In these circumstances, a dispute was raised by the second party. The first party not only appeared before the Labour Officer in the conciliation proceedings, but also made a written representation in the proceedings.

4. The case of the Petitioner is that when the matter went on a reference before the Labour Court, the notice issued by the Court to it was received by one Mamata Kamdar on 8 February 2017. It is submitted that on the very next day, i.e. on 19 February 2017, Kamdar fell sick and stopped attending office. When she resumed duty after a few days she failed to inform the manager about receipt of the notice from the Labour Court and in the premises, the Petitioner was not aware of the reference hearing and no representative of the Petitioner attended the proceedings before the Labour Court. It is submitted that except that the very first

notice (notice dated 20 January 2017), no other notice was received by the Petitioner and in the premises, the impugned award came to be passed exparte.

5. A notice of this petition was duly issued to the Respondent. The notice was for final hearing of the writ petition. The Bailiff's report shows that the notice was duly served on the Respondent. Despite service, the Respondent does not appear to show cause.

6. The facts narrated above clearly make out a case for setting aside the exparte award and offering the petitioner herein an opportunity to contest the second party's case in reference.

7. Accordingly, the petition is allowed and impugned order of Labour Court dated 2 August 2018 is quashed and set aside and Reference (IDA) No.316 of 2016 is remanded to the Labour Court at Mumbai for a fresh hearing in accordance with the law.

(S. C. GUPTE, J.)