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

WRIT PETITION NO. 3667 OF 2019

Pioneer Embroideries Ltd.Petitioner
Vs.
Narad Pd. Khushwaha and ors. Respondents

Mr.V.P. Vaidya a/w Mr.Mahendra Agavekar, for the Petitioner.

CORAM : M. S. KARNIK, J.

DATE : 24th MARCH, 2021

P.C. :

. Heard learned Counsel for the Petitioner. None for the Respondents though they are duly served. The order challenged in this Petition is passed by the Presiding Officer, Labour Court rejecting the application made by the Petitioner - first party for taking the written statement of the first party on record on the ground that there is delay in filing the written statement and no sufficient reasons in support of the application are furnished in support of the delay caused.

2. The dispute between the Petitioner – employer and Respondents – employee is pending in the reference made under section 10 of the Industrial Disputes Act, 1947 before the Labour Court at Silvasa. The statement of claim came to be filed by second party workmen in 2012/2013. The application for condonation of delay in filing the written statement was filed by the Petitioner – first party on 20/06/2018. The employees did not file any reply to the said application. By order dated 10/10/2018, the Labour Court found that there are no justified reasons to condone the delay of 6 years, hence rejected the application.

3. It is the contention of the learned Counsel for the Petitioner that the notice of reference of dispute was received by first party only after 10/02/2015. The order of reference was not available and even statement of claim was not sent to the first party as per the requirement of the Central Rules. There is some ambiguity about the list of workers who are allegedly ousted from service on 01/09/2004, a list of which is not supplied to the Petitioner in the submission of the learned Counsel for the Petitioner. In the application, it was further stated that none of the annextures to the order of the reference received by first party company and they are also not available on record of the Labour Court.

4. By filing an application dated 17/08/2015, the first party has raised the objection to proceeding with the matter in absence of the annexure to the order of reference. It is further pointed out that first party has raised objection for a common statement of claim on behalf of 280 employees filed by one Shri Shiv Prasad Nayak without any authority on record. The learned Counsel further submitted that several employees who have individually filed statement of claim is in variance with the statement of claim filed by Shri Shiv Prasad Nayak and as a result there are two statement of claims in respect of the 10 to 12 workers. For all these reasons and also on the contention that two statement of claims for the same reliefs based on same cause of action is impermissible, the Petitioner filed the application for condonation of delay in filing the written statement and taking written statement on record.

5. The impugned order reveals that the employees are absent at the hearing of the said application Exhibit 41. The Labour Court has not adverted to the reasons mentioned in the application for condonation of delay. The Labour Court only observed that no justified reasons are found to condone the delay of 6 years.

6. The impugned order was passed on 10/10/2018. As on the date of filing of the application for condonation of delay in taking the written statement on record, the hearing of the reference had not commenced and even the issues were not framed. Learned Counsel for the Petitioner points out that the affidavit of evidence on behalf of the second party workmen has been filed only in January 2019.

7. Though the reference is of the year 2005, even the statement of claim is filed by the Respondent - employee only in the year 2013. This is of course no justification for the Petitioner to have filed written statement belatedly. It is not as if the Respondent - employee cannot be compensated by imposing appropriate cost for the delay caused in filing the written statement. The Respondents have not appeared despite service of notice of this Petition. Taking over all view of the matter, in the interest of justice, in my opinion, the Labour Court should have condoned the delay in filing the written statement and allowed the application Exhibit 41 subject to payment of cost.

8. For the reasons mentioned in the application at Exhibit 41 and in the light of the submissions made by learned

Counsel for the Petitioner, in the interest of justice, the present Petition deserves to be allowed and the same is allowed subject to payment of cost of Rs.50,000/-. The Petitioner should not be deprived of an opportunity to defend the reference particularly when even issues are not framed on the date of passing of the impugned order. Payment of cost is condition precedent of taking written statement on record. Cost to be deposited in the Labour Court at Silvassa within a period of 4 weeks from today. As there are 10 Respondents - employees, each of the Respondent is permitted to withdraw Rs.5,000/- from the total cost of Rs.50,000/- to be deposited.

9.. The order passed below Exhibit 42 is a consequence of order passed below Exhibit 41. Consequently, orders passed below Exhibits 41 & 42 are quashed. Application Exhibit 41 is allowed. Written statement is permitted to be taken on record.

10. Writ Petition is allowed in the above terms.

(M.S.KARNIK, J.)