

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9165 OF 2021

Lokmanya Tilak College of Engineering through
Vivek K. Sunnapwar ... Petitioner
Vs.
Harishyam Pandey and another ... Respondents

Mr. Aseem Naphade a/w. Mr. Nikhil Mehta i/b. KMC Legal Venture for
Petitioner.

Mr. Vagish Mishra with Mr. Varad Dubey i/b. Law Counsellors for
Respondent No.1.

Mr. N. K. Rajpurohit, AGP for Respondent No.2-State.

**CORAM : R. D. DHANUKA &
R. N. LADDHA, JJ.**

DATE : DECEMBER 20, 2021

P.C. :-

Rule. Mr. Mishra, learned counsel waives service for respondent No.1. Mr. Rajpurohit, learned AGP waives service for respondent No.2-State. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner-employer has impugned the order dated 15.07.2021 passed by the Appellate Controlling Authority, Member, Industrial Court, Thane in Application for condonation of delay bearing Stamp No.185 of 2021 in Appeal arising from Application (PGA) No.12 of 2015 seeking condonation of delay in filing the said appeal.

3. Mr. Naphade, learned counsel for the petitioner invited our attention to the application filed by his client seeking condonation of delay on 13.07.2021. He submits that the said appeal was preferred by his client after more than five years of the order dated 13.04.2016 passed by the Controlling Authority and 2nd Labour Court, Thane. He submits that the said appeal could not be filed earlier in view of the ongoing

settlement between the parties.

4. Learned counsel for respondent No.1, on the other hand, has invited our attention to the affidavit-in-reply filed by the petitioner in Writ Petition No.10104 of 2015 and would submit that respondent Nos.2 and 3 therein (petitioners herein) were fully aware of the order passed by the Labour Court. It is not pleaded by the petitioner that any settlement was going on between the parties. He invited our attention to paragraph 14 of the said affidavit and would submit that even in the said affidavit as far back as on 11.10.2017, petitioner had stated that they were in a process to challenge the judgment and order dated 13.04.2016 before the Competent Court of law. He submits that only after his client filed recovery proceedings before the Labour Court pursuant to the order of clarification issued by this Court in the interim application filed by the petitioner on 17.04.2021 being Interim Application (St.) No.3952 of 2021, the petitioner filed an appeal before the Industrial Court impugning the said order dated 13.04.2016 along with the application for condonation of delay. He strongly contests the statement of learned counsel for the petitioner that any settlement was going on between the parties from 2006 to 2021.

5. A perusal of the affidavit-in-reply filed by the petitioner clearly indicates that the petitioner was fully aware of the said order dated 13.04.2016 passed by the Labour Court and had proposed to challenge the said order as indicated in the affidavit-in-reply dated 11.10.2017 filed by the petitioner in Writ Petition No.10104 of 2015. In our view, the statement thus made by learned counsel for the petitioner, on instructions, that the appeal could not be filed for five years because of the alleged ongoing settlement between the parties is factually incorrect and contrary to the statement made by the petitioner in its affidavit dated 11.10.2017 in Writ Petition No.10104 of 2015.

6. We have perused the application filed by the petitioner seeking

condonation of delay which would clearly indicate that no case was made out for condonation of delay. There was gross unexplained delay of more than five years in filing appeal. We do not find infirmity in the order passed by the Industrial Court. Writ Petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

7. Rule is discharged.

(R. N. LADDHA, J.)

(R. D. DHANUKA, J.)

Minal Parab