

DDR

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

WRIT PETITION NO. 9727 OF 2019

NIKU KUMAR PARMANAND PRASAD SINGH ..PETITIONER
VS.

M/S. VEEJAYEM PLAST MOULDS & ORS. ..RESPONDENTS

Mr. Vivekanand Akshali for petitioner.
Mr. Vivek Machha for respondent No.1.
Mrs. M.S. Bane, AGP for State.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 5, 2021

P.C.:-

Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. The order under challenge is dated 11/4/2018 passed by the Commissioner for Employees' Compensation and the Judge, First Labour Court, Nashik. The petitioner filed an application under Section 8(6) of the Employees' Compensation Act (herein after referred to as 'the said Act' for short). The claim application came to be allowed by the Labour Court by an order dated 13/5/2014. It was held that the petitioner is entitled to receive compensation amount of Rs.1,84,267/- along with interest @ 12% p.a. from 15/3/2004 along with 50% penalty and costs of Rs.1000/- from the respondent.

3. The petitioner filed Misc. Recovery Application No. 28 of 2015 as the amount was not paid to him. The said application came to be rejected as the employer filed the appeal before this Court. There was delay in filing the appeal and therefore the application for condonation of delay was filed. The First Appeal was rejected by this Court by an order dated 26/7/2017. The amount of compensation was deposited before the Labour Court on 6/8/2014.

4. The Commissioner for E.C.A. rejected the application made for withdrawal of the amount. The rejection is on the ground that Section 30-A of the Workmens' Compensation Act, 1923 gives discretion to the Court not to disburse the amount deposited by the employer if any appeal is preferred by the employer.

5. The employer pointed out to the authority that the appeal has been preferred. The delay condonation application was dismissed by this Court on 26/7/2017. An application for restoration was moved and the same is pending before this Court. In these circumstances, as the application for restoration was pending, the authority did not allow the application.

6. Learned counsel for the respondent No.1 vehemently opposed the Petition. He submitted that the First Appeal has been filed in this Court. He further submitted that the amount has already been deposited as per the order of the competent authority. He submitted that if the petitioner is to withdraw the amount then it will be difficult for the respondent to recover the same in the event the petitioner succeeds in the First Appeal. Lastly, he submitted that in the event this Court is inclined to allow the Petitioner to withdraw the amount then it may be on the petitioner's furnishing the security.

7. Heard learned counsel for the parties.

8. The claim application made by the petitioner was allowed as far back as on 13/5/2014. Thereafter, the First Appeal was filed. The delay condonation application and the First Appeal came to be dismissed in default. It appears that till date the appeal has not been restored. The petitioner has stated that he is unemployed due to his permanent disability and he has no source of income. He has also given undertaking before the Labour Court at Exhibit U-9 that in the event if any adverse order is passed, he would refund the amount of compensation if it is paid to him. The petitioner cannot be made to wait endlessly and

made to suffer further. In this view of the matter, in my opinion, the application made by the petitioner before the Labour Court under Section 8(6) of the said Act deserves to be allowed.

9. The present Petition is allowed in terms of prayer clause (b).

10. The petitioner is permitted to withdraw the amount of compensation which has been deposited with the Labour Court.

11. The petitioner has already filed undertaking at Exhibit – U-9 before the Labour Court and he would be bound by the same.

12. The Writ Petition is disposed of accordingly.

13. Rule is made made absolute.

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(M.S.KARNIK, J.)