

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5515/2019

Messrs Shree Steel Casting Pvt. Ltd.
P-31/1, M.I.D.C. Industrial Area,
Hingna, Nagpur-440 016, through
its Managing Director.

....PETITIONER

...V E R S U S...

Sadanand Ramnayan Yadav,
Medhankar Wadi, Bhagat Basti,
Chakan, Pune.

...RESPONDENT

Mr. C. M. Samarth, Advocate for petitioner.
Mr. S. D. Thakur, Advocate for respondent.

CORAM:- V. M. DESHPANDE, J.
DATED :- 12.03.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties. Heard Mr. Samarth, learned counsel for petitioner and Mr. Thakur, learned counsel for respondent.

2. Petitioner is employer and respondent is employee. They will be referred as per their original positions. The employee filed an application under Section 33 (2) of the Industrial Disputes Act, 1947 before the Labour Court, Nagpur, which was registered as I.D.A. Case No.65/2008. The said application was contested by

the employer by filing written statement (Exh.-8). The application was allowed by learned 3rd Labour Court, Nagpur vide judgment dated 05.05.2016 and employer was directed to pay the amount of Rs.5,55,448/- to employee. In the judgment dated 05.05.2016, it is observed by the learned Judge Judge, Labour Court that the employer remained absent.

3. After judgment, employer filed an application for setting aside ex parte judgment dated 05.05.2016. The said was registered as Misc. Application No.1/2019. The said application was for setting aside ex parte judgment is still pending before the learned Labour Court. Along with the said application, employer filed an application for stay of the judgment dated 05.05.2016 (Exh.-11). The said application is allowed by the learned Judge, Labour Court, Nagpur on 16.03.2019 on a condition that employer shall deposit 50% of the total amount due towards the employee and that execution proceedings pending before Civil Judge Senior Division, Nagpur shall stand stayed till conclusion of proceedings.

The employer is before this Court because he is aggrieved by the direction to deposit 50% of the amount.

4. Mr. Samarth, learned counsel for the employer submits that after written statement was filed by employer, the application filed by the employee under Section 33 (C) (2) was dismissed for want of prosecution. The employee, therefore, filed an application for restoration of the said application and without there being any notice to the employer, the said application was allowed. The employer was not having knowledge about the restoration and therefore he could not participate.

5. The aforesaid contention is resisted by learned counsel for the employee Mr. Thakur. He submitted that on 14.03.2013, the employee filed an application for restoration. On 21.03.2013, the Labour Court issued notices on the said application and those were served upon the employer. He submitted that postal acknowledgment dated 09.05.2013 is placed on record. In spite of service, employer chose not to participate in the proceedings and therefore on 08.11.2013, the learned Judge, Labour Court allowed the application for restoration filed by the employee and the application was restored. He, therefore, submitted that it does not lie in mouth of employer that he was not served with notice.

6. The learned counsel for the employer submitted that though acknowledgment is there on record, it is not signed by the authorized person of the employer but some employee. The said aspect, in my view, is not having any bearing in respect of the controversy involved in this writ petition.

7. Challenge in this writ petition is to discretion exercised by the learned Judge, Labour Court directing the employer to deposit 50% of the amount.

8. Admittedly, the employee entered into the witness box and after appreciating evidence, may be prima facie, the learned Judge at the time of delivering judgment on 05.05.2016 found that the employee is entitled to recover dues.

9. By the impugned order, the learned Court has granted stay in favour of the employer on a condition of deposit of 50% amount of total due. According to the counsel for the petitioner, the total dues will be inclusive of principal amount of Rs.5,54,448/- plus interest at the rate of 10% which roughly comes to Rs.14,00,000/-. He, therefore, submitted that the said is on excessive side.

10. The employer has already deposited Rs.2,00,000/- with Registry of this Court as per order passed on 09.08.2019. In my view, some relief can be granted in favour of employer inasmuch as instead of depositing 50% of the total amount, the employer shall deposit the total principal amount of Rs.5,54,448/- and out of which, Rs.2,00,000/- are already deposited before this Court. The remaining amount of Rs.3,54,448/- be deposited by employer before the 3rd Labour Court, Nagpur within six weeks from today. Registrar of this Court shall transfer the amount of Rs.2,00,000/- deposited by the petitioner as per order dated 09.08.2019 to the 3rd Labour Court, Nagpur.

11. There shall be stay to the execution of the judgment and order dated 05.05.2016 till Misc. Application is decided finally by giving opportunity of hearing inclusive of adducing evidence to both; employer and employee on a condition that remaining amount of RS.3,55,448/- is deposited within six weeks from today.

The amount so deposited shall remain with the Labour Court till final decision of Misc. Application (IDA) No.1/2019. 3rd Labour Court, Nagpur is directed to deposit Misc. Application

(IDA) No.1/2019 within a period of three months from the date of deposit of the amount by employer.

Rule is made absolute in the above terms. No order as to costs.

JUDGE

kahale