

Item No.09.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 31.03.2022

DELIVERED ON: 31.03.2022

CORAM:

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 827 OF 2021
with
I.A. NO.CAN 1 OF 2021**

**DELTA Ltd.
vs.
Ajit Sardar & ors.**

Appearance:-

Ms. Amrita Pandey
Ms. Anamika Pandey

... for the appellant

Mr. Susovan Sengupta

... for respondent Nos. 2,3 & 4

Ms. S. Sengupta
Mr. Rananeesh Guha Thakurata

... for respondent No.1

Mr. Anirban Ray, Ld. GP
Mr. Raja Saha
Ms. Tanusri Chanda

... for the State

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This intra-Court appeal is directed against the order passed in WPA 11094 of 2021 dated 13.08.2021. The appellant before us is the owner of a jute mill and the respondent No.1 was one of its workmen. The respondent No.1 had not been paid the gratuity along with interest. Therefore, he approached the Certificate Officer under Bengal Public Demand Recovery Act, 1913 and certificate of recovery was issued and to implement the same the writ petition was filed. Direction has been issued by the learned Single Judge to complete the process of payment. Aggrieved by the same the appellant is before us.

2. Learned advocate for the appellant submitted that the entire amount of gratuity along with simple interest at the rate of 10% p.a. has been paid. Learned counsel for the workman, on the other hand, would submit that on account of delay on the part of the management to disburse the gratuity amount compound interest is also payable and to the said effect computation has been done by the proper officer and has also been communicated to the appellant management. Learned advocate appearing for the appellant would submit that the appellant was not heard in the matter and as per her instruction nothing has been communicated to the management and even assuming a computation has been done but that is not a matter which is the subject matter of the appeal or the writ petition. If there has been delay in disbursement of gratuity then it is a very serious matter. The reason pleaded by the appellant management before us

is financial constraints and difficulties. The law on that issue is well settled that no amount of financial constraints or difficulties faced by the employer can be a ground to deny the gratuity to a retired employee. It is a statutory right, a property right and it is not at the mercy of the employer. Therefore the Court's view is that default in respect of payment of gratuity to be a very serious matter and in the event of non-payment of gratuity within the time permissible it can be presumed that funds payable to the worker, who had rendered service has been misutilised by the appellant management for their personal reasons. Therefore, the Act provides for not only recovery of interest but compound rate of interest and also can initiate prosecution of the management, attachment of property etc. Though the learned advocate for the appellant would submit that the quantum of compound rate of interest is not the subject matter of this appeal yet we are entitled to take note of the same because the reason for which the workman approached the writ Court was to implement the certificate issued by the Recovery Officer. Therefore, until and unless the entire amount is paid under the provisions of Payment of Gratuity Act the appellant management cannot say that full and final settlement has been made.

3. In the result, the appeal stands **dismissed**. Consequently, the application being CAN 1 of 2021 stands disposed of.

4. We direct the concerned authority to serve one more copy of the calculation which is to be done by him computing the compound rate of interest and grant reasonable opportunity of hearing to the appellant management within

fifteen days to settle the dues to the workman. If it is not done, we further direct the authority under the Payment of Gratuity Act and the Revenue Authority to take action in accordance with law.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

RP/AN (AR. CT)