

Item No.5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 08.08.2022

DELIVERED ON:08.08.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. No.233 of 2022

With

I.A. No.CAN 1 of 2022

With

I.A. No.CAN 2 of 2022

The Statesman Limited.

Vs.

State of West Bengal & Ors.

Appearance:-

Mr. Supriya Ranjan Saha,

Mr. Suman Kumar Mukherjee

..... for the appellant.

Mr. Anirban Kar

**... for the respondent no.3/
workman**

JUDGMENT

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

Re: I.A. CAN 1 of 2022

1. This application has been filed to condone the delay of 120 days in filing the instant appeal.

2. We have heard Mr. Supriya Ranjan Saha, learned counsel appearing for the appellant and Mr. Anirban Kar, learned counsel appearing for the respondent no.3.

3. Though We are not fully convinced with the reasons given in the affidavit filed in support of the application, yet we exercise discretion as the learned Advocates for the parties request that the appeal itself be heard and disposed of and only for such reason, the delay is condoned and the application is allowed.

4. Accordingly, the delay in filing the instant appeal is condoned.

5. The application being I.A. CAN 1 of 2022 is allowed.

Re: F.M.A. No.233 of 2022

6. This intra-Court appeal is directed against an interim order dated 21st April, 2021 passed in W.P.A. 25848 of 2018. In the said writ petition, the appellant / management had challenged the final order passed in Case No. Comp. 10 of 2015 filed under Section 33C(2) of the Industrial Disputes Act, 1947 before the First Labour Court, Kolkata dated 19th May, 2016. By the said order, the Labour Court directed the appellant / management to pay the respondent/workman a sum of Rs.8,60,786/- within a time frame. The order was put to execution by approaching the 16th Metropolitan Magistrate at Calcutta in Case No.CS - 71130 of 2017. It appears that when an arrest warrant was issued and attachment of the property of the management was made, the writ petition was filed challenging the said order passed by the Labour Court computing the wages payable.

7. The Learned Single Bench by way of the impugned order had directed payment of Rs.5 lakhs to the respondent / workman within a time frame. The learned Writ Court also made it clear that the writ application be heard for the rest of the amount in the month of June, 2021. The management is aggrieved by such direction.

8. It is submitted by the learned Advocate appearing for the appellant that the respondent / workman was dismissed from service and since a dispute was pending at the relevant time, the approval of the competent authority had to be obtained and accordingly, an application was filed, which was rejected and challenging the said order the appellant / management has filed W.P.A No.25848 of 2018, which is pending before this Court. It is further submitted that in the said writ petition, the respondent / workman filed an application under Section 17B of the Act and an order was passed and 50% of the last drawn wages had been disbursed with the respondent / workman for the period ordered by the Court. It is submitted that it is only at that stage, they came to be aware of the *ex parte* order passed by the First Labour Court dated 19th May, 2016 and the writ petition was filed.

9. The learned Single Bench has noted that though the order was passed on 19th May, 2016 by the Labour Court, the writ petition was filed only on 18th December, 2018.

10. It is pointed out by the Learned Advocate for the respondent / workman that even in the writ petition,

inconsistent stand has been taken by the appellant / management and in this regard, he has drawn our attention to paragraph 11 of the writ application wherein the appellant / management would state that no notice was served on the company in the proceedings before the Labour Court filed under Section 33C (2) of the Act. Simultaneously, it is stated that the Law Officer of the company, who was dealing with all the labour cases stopped attending the Labour Court and may be due to this reason, the matter was heard ex parte. Thus, it is pointed out by the Learned Advocate for the respondent that this inconsistent stand taken by the management is fatal to their case.

11. In any event, we note that the Labour Court has recorded in its order dated 19th May, 2016 that in spite of service of summons, management did not appear and contest the matter. Thus, in our view, considering the facts and circumstances of the case, the learned Single Bench has exercised its discretion and directed payment of Rs.5 lakhs and the writ application is still pending.

12. Thus, we find that there is no error in exercise of discretion by the learned Single Bench and consequently, the order impugned does not call for any interference. Accordingly, the writ appeal and the connected application being I.A. No.CAN 2 of 2022 are dismissed with a direction upon the appellant / management to comply with the direction issued by the learned Writ Court in its order dated 21st April, 2021 not later than 22nd August, 2022 and file a compliance report before the learned Writ Court in this regard.

13. There shall be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)