

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No. 27 of 2022

Paresh Kumar Swain

....

Petitioner

Sk. Zafarulla, Advocate

-Versus -

Kabita Sahu and another

....

Opposite Parties

Mr. S.Mohanty, Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

24.11.2022

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1. This matter is taken up through virtual mode.
2. Heard learned counsel for the petitioner and learned counsel for the opposite parties.
3. The present opposite parties filed an application in the Court of learned S.D.J.M., Bhubaneswar being Criminal Misc. Case No.101 of 2017 under Section 15(2) of the Payment of Wages Act, 1936. Such application was filed in terms of the order passed in I.D. Misc. Case No.50 of 2014 by the Presiding Officer, Labour Court, Bhubaneswar on 11.03.2015. The learned S.D.J.M. by judgment dated 12.10.2020 allowed the application by directing the present petitioner to pay a sum of Rs.50,194/- to each of the opposite parties along with compensation of Rs.2008/-. Challenging such judgment, the petitioner preferred an appeal before the Court of Sessions, which was registered as Criminal Appeal No. 02 of 2021 and transferred to the court of learned 5th Additional Sessions Judge, Bhubaneswar for disposal. By order dated 05.02.2021, the appeal was allowed by condoning the delay. Upon receipt of notice the opposite parties entered appearance and raised objection with regard to maintainability of the appeal on the ground of non-compliance of the mandatory

provisions of Section 17(1-A) of the Payment of Wages Act. Considering such objection and the statutory provision, learned appellate court found that the mandatory provision had not been complied with for which the appeal was not maintainable in the eye of law. Accordingly, the Criminal Appeal was dismissed due to such non-compliance.

4. Sk. Zafarrula, learned counsel appearing for the petitioner submits that having once admitted the appeal, it is not open to the appellate court to recall its order as it amount to review, which is not permissible.

5. Mr. S.S. Mohapatra, learned counsel appearing for the opposite parties submits that the order passed by the appellate court in admitting the appeal cannot be treated as a valid order so as to serve as a bar for its recall. He further submits that unless the provision under Section 17(1A) of the act is complied with, the appeal itself would not be maintainable. He therefore submits, no interference is warranted.

6. Considering the rival contentions, it would be apposite to refer to the relevant statutory provision. Section 17 of the Payment of Wages Act provides the remedy of appeal against any order made under Section 15(2). Sub-section (1A) reads as under:-

“(1A) No appeal under clause (a) of sub-section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.”

7. A bare reading of the aforequoted provision makes it clear that the same is a mandatory provision for entertaining the appeal. In other words, unless the provision is complied with, the

appeal itself is not maintainable.

It is evident that while admitting the appeal, learned appellate court was not alive to the provision referred above. However, the opposite parties having appeared and brought it to the notice of the Court, the impugned order was passed, according to this Court rightly, in holding that the appeal is not maintainable for non-compliance of the mandatory provision.

9. In course of hearing, it is brought to the notice of the Court by learned counsel for the opposite parties that pursuant to an execution case filed by them, the petitioner has deposited a sum of Rs.40,000/-.

10. Mr. Mohapatra submits that the total amount payable is Rs.1,00,000/- including interest and therefore, the petitioner is required to pay the balance amount also.

11. Sk. Zafraulla submits that his client is ready and willing to deposit the entire balance amount in the court below and therefore the appeal may be directed to be restored.

12. Considering the submissions as above and the fact that the appeal has not heard on merits, the criminal revision is disposed of by setting aside the impugned order with a direction to learned court below to consider admission of the appeal subject to deposit of the balance amount by the petitioner. If the amount is paid within a period of four weeks, the learned appellate court shall consider the question of admission and proceed further.

13. With these observations and directions, the criminal revision is disposed of.

(Sashikanta Mishra)
Judge

I.A.No. 735 of 2022

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1. Till such time, no coercive action shall be taken against the petitioner.
2. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

B.C. Tudu

