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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 448 OF 2022

ARVIND R. PEDNEKAR ... PETITIONER
VS
PERNEM MUNICIPAL COUNCIL
THR. ITS CHIEF OFFICER ... RESPONDENT

Mr. Dinesh E. Naik, Advocate for the Petitioner.

CORAM: G.S. KULKARNI, J.
DATED: 20 SEPTEMBER 2022

ORAL ORDER.

1. Heard learned Counsel for the petitioner.
2. This Petition has been filed praying for the following reliefs:
 - a. *The impugned order dated 24/08/2022 in the Case No. LC-II/IT/07/2015 of the Id. Labour Court-II at Panaji, Goa be quashed and set aside;*
 - b. *Pending the hearing and final disposal of the present petition further proceedings before the Id. Labour Court-II at Panaji in Case No. LC-II/IT/07/2015 be stayed;*
 - c. *For ex-parte interim relief in terms of prayer clause (b) above;*
 - d. *For such further and other relief/s as this Hon'ble Court may deem fit and proper;*

e. For costs.

3. The orders impugned in this Petition are, firstly, an order dated 24 August 2022 passed by the learned Presiding Officer, Labour Court-II, whereby an application as made by the respondent-Pernem Municipal Council, who is the employer of the petitioner for setting aside ex-parte order dated 29 March 2022 has been allowed and secondly, to an order dated 2 December 2021 passed by the learned Labour Court-II, whereby the respondent was marked as ex-parte as none represented the respondent, has been set aside.

4. The respondent had filed an application for setting aside of an order dated 2 December 2021 whereby the Labour Court-II ordered that the proceedings be held ex-parte to the respondent as none appeared for the respondent. The respondent filed an application challenging the said order. In the said application, the respondent/employer contended that during the Covid pandemic period the Advocate for the respondent missed the dates and therefore, remained absent before the Court. For such reasons, the Court was pleased to mark the respondent ex-parte for further course of adjudication of the petitioner's case. It was stated that

the Advocate for the respondent had shown sufficient cause as to why he remained absent. It is also stated that in the interest of justice, the respondent be permitted to lead evidence and hence, such order may be set aside.

5. The petitioner/workman opposed the said application of the respondent *inter alia* contending sufficient cause was not shown by the respondent and the respondent took undue advantage of the Covid pandemic being a reason for not being represented for setting aside the said order passed by the Labour Court directing that the proceedings shall be filed ex-parte to the respondent. It is contented that there was no specific contention as to the objection of limitation having been raised. Also a sufficient cause shown in the manner urged was also not supported by any documents.

6. The Labour Court considering the application of the respondent and the grounds as noted above has accepted the respondent's case and held that the application was required to be allowed by the impugned order. The learned Labour Judge has clearly held that it was within the jurisdiction of the Court to set aside the ex-parte order against the respondent.

7. On a perusal of the impugned order, I find no perversity much less illegality in the view taken by the learned Trial Court. It cannot be overlooked that the period during which such an order dated 2 December 2021 was passed, certainly could be considered as the period when the effects of the pandemic had survived. It is significant that the respondent-Pernem Municipal Council had engaged the services of an Advocate. It is the Advocate who had stated on affidavit that due to Covid pandemic he could not attend the proceedings. It is well settled that the litigant cannot be made to suffer for the fault of the Advocate. Considering such position in law, there is no infirmity whatsoever that the learned Judge set aside the impugned order dated 2 December 2021. The impugned order does not warrant any interference.

8. At this stage, the learned Counsel for the petitioner is at pains to point out that the petitioner has been suffering for quite some time and due to such conduct of the respondent in remaining absent, the proceedings were delayed. He submits that the respondent ought to be put to some condition so that no prejudice is caused to the petitioner/workman.

9. In my opinion such contention on behalf of the petitioner needs to be accepted and particularly in view of the perusal of the Roznama. The respondent is directed to co-operate in the early disposal of the pending proceedings by avoiding unnecessary adjournments. The Labour Court is directed to proceed with the adjudication of the petitioner's proceedings without any further delay.

10. In the event, there is any further default on the part of the respondent of being not diligent in pursuing the proceedings, the Labour Court should take a strict view of the matter. In such event, the respondent would not have any chance to make any further grievance.

11. The Labour Court shall make an endeavour to conclude the proceedings as expeditiously as possible and preferably within six months from today.

12. The Petition is accordingly disposed of. No costs.

G.S. KULKARNI, J.