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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4678 OF 2022**

Prochem Turnkey Projects Pvt.Ltd
Through its Director Mr.Swatantra Mishra ...Petitioner

v/s

Bhagwaji Chaturi Yadav ...Respondent

Mr. Dormaan Manshid Dalal a/w. Shashwati Diskha & Sudhir Reddy
for the Petitioner.

Mr. A.S. Rao for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JUNE 20, 2022

P.C.:-

1] Petitioner is opponent in Industrial Dispute No.32 of 2018 which came to be allowed vide order dated 24th February, 2021 whereby Petitioner was directed to reinstate Respondent with full back wages.

2] Petitioner-employer having noticed that the aforesaid order was passed in his absence, preferred Application for condonation of delay containing prayer for grant of stay to the execution. Prayer for stay is rejected vide order impugned dated 28th February, 2022, pending

decision on delay condonation application. As such this Petition.

3] Contentions are, Petitioner has a good triable case and in case if matter is re-heard by the Labour Court after setting aside the order dated 24th February, 2021, there is much likelihood of the Petitioner getting success in the same. It is further claimed that Application for condonation of delay was moved considering the date of knowledge to the Petitioner of passing of the order dated 24th February 2021 by the Labour Court which is in December 2021. He would further urge that since the proceedings for setting aside ex-parte order are maintainable, it was a mere formality to condone the delay and hear the said Application on merit. Till the Application for condonation of delay is to be heard on merit, unless the stay is granted matter will render infructuous and that being so Court below committed an error.

4] Mr. Rao, while resisting the aforesaid claim submits that if Petitioner complies with the monitory part of the order of the Labour Court passed on 24th February, 2021 respondent has no objection for staying the execution.

5] Considered submissions.

6] On 24/2/2021, Industrial Dispute preferred by the Respondent came to be allowed whereby Petitioner was directed to reinstate Respondent-employee with full back-wages.

7] In the said proceedings, the Petitioner though was served has failed to appear as such by order dated 10/2/2020 proceedings were directed to be continued ex parte. Respondent has taken out application under Section 33-C(1) of Industrial Disputes Act, praying therein payment of back-wages of around Rs 15 lakhs and issuance of recovery certificate. Petitioner accordingly taken out Misc. Application No.2 of 2022 for condonation of delay, thereby alleging that they were not aware about the aforesaid Industrial Proceedings as notice of the Industrial Dispute was not served.

8] Fact remains that RPAD acknowledgment was on record of the Labour Court which has prompted it to proceed ex parte against the Petitioner. No doubt Petitioner can seek stay to the execution of the award delivered by the Industrial Court. However, there has to be

sufficient reasons. As stay of the execution is sought to which Respondent positively responded with a request to this Court to direct the Petitioner to deposit the amount, Court has considered the claim of the Petitioner. The Petitioner is not willing to deposit the said amount.

9] In the aforesaid backdrop, Court below, in my opinion, was justified in rejecting prayer of the Petitioner for grant of stay pending consideration delay condonation application.

10] In this backdrop, order impugned is quite justified as no illegality is noticed. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)