

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4087 OF 2023

**NANASAHEB NAMDEV KAKDE
VERSUS
BHAURAO PANDURANG CHAVAN**

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Advocate for Petitioner : Mr. S.R. Sapkal
Advocate for Respondent : Mr. V.P. Golewar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 31st AUGUST, 2023

PER COURT :

1. By this petition filed under Article 226 of the Constitution of India, petitioner challenges orders passed by the learned Judge, Labour Court, Jalna, below Exhibit U-1 and Exhibit C-7 in W.C. Case No.10/2022.

2. Respondent has filed the W.C. case seeking compensation for alleged injury sustained by him while he was on duty, in the employment of petitioner. In the said matter, with the permission of Labour Court, public notice was issued to the petitioner which was published in the local news paper '*Punya Nagari*' on 28/08/2022, however, the petitioner failed to appear. Therefore, the Labour Court passed *ex parte* order below Exhibit U-1 against petitioner on 21/10/2022. Petitioner, thereafter, filed application Exhibit C-5, praying for setting aside the *ex parte* order.

Respondent objected the said application stating that, unless the written statement is enclosed with the application, setting aside order may not be passed as per the Code of Civil Procedure. Petitioner, on the same day, filed application Exhibit C-4 contending that, he has appeared on the same day and since respondent has not given copy of W.C. case and annexures, he is unable to file reply. Hence, respondent may be directed to give the said copies. Thereafter, petitioner filed application Exhibit C-7 seeking permission to file written statement, along with the written statement, on 30/11/2022. The said application was opposed by the respondent contending that, no order is passed on the application Exhibit C-5 for setting aside *ex parte* order and therefore, this application is not maintainable. Labour Court rejected the application Exhibit C-7. Petitioner is aggrieved by the *ex parte* order and order passed below Exhibit C-7. Hence, the present petition.

3. Heard learned advocate for petitioner and learned advocate for respondent. Perused the writ petition memo, annexures thereto, the impugned orders and affidavit-in-reply filed by the respondent.

4. It appears from record that application Exhibit- C-5 filed by the petitioner for setting aside *ex parte* order is not yet decided. Labour Court has rejected the application Exhibit C-7 holding that,

the petitioner has failed to give sufficient reasons for his non-appearance at the earlier point of time, in terms of Order 9 Rule 7 of the Code of Civil Procedure. In the affidavit filed in support of the said application also, petitioner has failed to assign sufficient reasons for his non-appearance. Record also shows that, though the public notice was issued, petitioner has failed to appear immediately after it's publication.

5. Learned advocate for respondent placed reliance on ***Punjab National Bank Vs. Vijai Kumar Dhariwal and Others, 1993 SCC OnLine All 245***, wherein the learned Single Judge of the Allahabad High Court has held that, under Order 9 Rule 7, the condition precedent for exercise of power thereunder is showing or proving of existence of good cause for non-appearance on previous date. There cannot be any dispute about the said proposition of law.

6. Petitioner has come out with the case that, he is appearing on his own after getting knowledge of the proceeding. He is resident of Newargaon, Taluka Gangapur, District Aurangabad and the proceeding is filed in the Court at Jalna.

7. The Workmen's Compensation Act is enacted with an object to provide compensation to the employees from the employer for injury by accident. The Labour court, while adjudicating the claim, performs a quasi-judicial act. It is a settled

legal position that rules of evidence and procedural rules are not strictly applicable to the quasi judicial proceedings.

8. In *State of Mysore Vs. S.S. Makapur, (1964) 1 LLJ 24 SC*, the Apex Court held that,

"For a correct appreciation of the position, it is necessary to repeat what has often been said that Tribunals exercising quasi-judicial functions are not Courts and that, therefore, they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity, must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.

To the same effect is the decision in Engineering Mazdoor Sabha v. Hind Cycles Ltd., Bombay (1963) 1 Supp. S.C.R. 625 at 631, already referred to. There that Court pointed out:

They (the Tribunals) can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedure; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them; they

may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations."

9. The reason assigned by the petitioner that, he is resident of Newargaon, Taluka Gangapur, District Aurangabad and the proceeding is filed in the Court at Jalna, can be accepted in the facts of the present case.

10. For the aforestated reasons and with a view to give fair and reasonable opportunity to petitioner to contest the case filed by respondent on merits, writ petition deserves to be allowed. Hence, the following order:-

ORDER

- (I) Writ petition is allowed.
- (II) The impugned orders passed by the learned Judge, Labour Court, Jalna, below Exhibit-1 and Exhibit-7 in W.C. Case No.10/2022, are quashed and set aside.
- (III) Application Exhibit-7 is allowed, subject to the petitioner paying cost of Rs.10,000/- to respondent, in the Labour Court, Jalna.

(NITIN B. SURYAWANSHI, J.)