



W.P.No.21357 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 24.01.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.21357 of 2021

and W.M.P.Nos.22603 & 22605 of 2021

M.S.Palanivel,
Proprietor,
MSP Papermill Private Company Limited,
Pillanatham,
Thiruchengode T.K.,
Namakkal District.

...Petitioner

Vs

1. The Joint Commissioner of Labour,
Workmen Compensation,
Coonoor.

2.Dhanapakiayam

3.The District Collector,
Namakkal.

4. The Tahsildar,
Thiruchengode Taluk,
Namakkal District.



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...Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for records of the 1st respondent in ATM No. 4137/ 2021 dated 07.09.2021 refusing to reopen the exparte award passed in WC.No.100 of 2016 dated 21.05.2018, quash the same and consequently, direct the 1st respondent to entertain the condone delay in filing to setaside the exparte award in WC.No.100 of 2016, dated 21.05.2018.

For Petitioner : Mr.S.Mohanasundararajan

For Respondents : Mrs.R.L.Karthika, Government Advocate
for R1
Mr.C.Paraneedharan
for R2
No appearance for RR3 & 4

ORDER

Writ petition is filed challenging the order of the Joint Commissioner of Labour workmen's compensation dated 07.09.2021 refusing to reopen the *ex parte* award passed in WC.No.100 of 2016 dated 21.05.2018 by condoning the delay in filing the set aside *ex parte* award petition.



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2. The 2nd respondent filed a claim petition before the 1st respondent for compensation for the injuries sustained by his son in an accident that occurred on 15.02.2014 while, his son was working as a electrician under the petitioner. Notice was served on the petitioner on 02.01.2016 but as the petitioner failed to appear, the 1st respondent passed an *ex parte* award on 21.05.2018 awarding compensation of Rs.8,61,120/- along with 12% interest from the date of accident against the petitioner. The petitioner on coming to know about the *ex parte* award filed an application to condone the delay of 1150 days in seeking to set aside the *ex parte* award dated 21.05.2018. In the said application, it was contended that notice was not received by the petitioner either in his individual capacity or as managing director of the company. The 1st respondent dismissed the application on the ground that the Revenue Recovery proceedings were pending to recover the claim amount. Aggrieved by the impugned order dated 07.09.2021, the petitioner has filed the above writ petition.



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3. The learned counsel for the petitioner submits that the 1st respondent failed to exercise the jurisdiction vested in him under Rule 41 of the Workmen's Compensation Rules, 1924, which empowers him to set aside *ex parte* order if the person against whom *ex parte* order is passed makes out sufficient grounds for setting aside the same. The learned counsel further submits that the reason given by the 1st respondent that Revenue Recovery proceedings were pending is unsustainable. The learned counsel, therefore prays that impugned order deserves be set aside and the writ petition be allowed.

4. The learned counsel for the respondents on the other hand submits that the notice was issued to the petitioner on 02.01.2016 and two years thereafter the *ex parte* award was passed. The learned counsel therefore submits that sufficient time was given to the petitioner to approach the 1st respondent. The learned counsel further submits that it was only after the



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Revenue recovery proceedings were initiated that the application to condone the delay of 1150 days in seeking to set aside the *ex parte* award was filed and hence there was absolutely no *bonafides* in the application.

5. I have heard both the learned counsel and have perused the materials placed on record.

6. Rule 41 of the Workmen's Compensation Act, 1923 reads as follows:

"41. Certain provisions of Code of Civil procedure, 1908 to apply.- Save as otherwise expressly provided in the Act or these Rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXIII, Rules 1 and 2, shall apply to proceedings before Commissioners, insofar as they may be applicable thereto:

Provided that-

(a) for the purpose of facilitating the application of the said provisions the Commissioner may construe them with such



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alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him;

(b) the Commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if he is satisfied that the interests of the parties will not thereby be prejudiced."

A bare reading of the rule shows that the provisions of Order IX CPC and other provisions mentioned therein apply to proceedings before the Commissioner, Workmen's Compensation Act. It is also by now settled that Section 5 of the Limitation Act also applies to proceedings under Workmen's Compensation Act. I am fortified in my view by the Hon'ble Division Bench Judgment in the case of *Kolandhayee Vs Deputy Commissioner of Labour and other* reported in 2010 SCC OnLine Mad 3167: 2010 (3) LLJ 768. When the law empowers the 1st respondent to condone the delay and set aside the *ex parte* Award, the failure to exercise such power is sufficient ground to set aside the impugned order.

7. From the impugned order it is seen that the only reason assigned



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by the 1st respondent for rejecting the condone delay petition is the pendency of Revenue Recovery proceedings before the 3rd respondent. As rightly contended by the learned counsel for the petitioner, under Rule 41 of the Workmen's Compensation Rules, 1924, the 1st respondent is empowered to set aside the *ex parte* order if sufficient reasons are made out to his satisfaction. In the present case the 1st respondent even without considering whether justifiable reasons were made out for condoning the delay dismissed the application merely on the ground of pendency of recovery proceedings.

8. In my view when the authority is given power under Rule 41 of the Workmen's Compensation Rules, 1924, the authority should have exercised the same instead of simply rejecting the application on the ground of pendency of recovery proceedings. I am therefore of the view that the impugned order cannot be sustained and the same is set aside. The matter is remanded to the 1st respondent to consider the application on merits and in accordance with law after giving opportunity to both the



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parties. The 1st respondent shall pass orders within a period of four (4) weeks from the date of receipt of a copy of this order.

Accordingly, writ petition is allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

24.01.2024

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

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To

1. The Joint Commissioner of Labour,
Workmen Compensation,
Coonoor.

2.The District Collector,
Namakkal.

3. The Tahsildar,
Thiruchengode Taluk,
Namakkal District.



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N.MALA,J.

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