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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-7313-2024

Date of decision : 21.01.2025

Parveen

... Petitioner

Versus

Roopa and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rajesh Goyal, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 19.07.2024 (Annexure P-7) passed by the Commissioner Court, Bahadurgarh, vide which the application for setting aside the ex-parte award dated 10.10.2023 has been dismissed.

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner was earlier appearing and had been proceeded against ex-parte on 02.09.2021 and at that time, there was Covid pandemic. It is submitted that thereafter the counsel for the petitioner appeared and moved an application for setting aside the said ex-parte order on 24.05.2022 and a reply was filed to the said application on 12.07.2022 and the matter was fixed for consideration and since on 30.08.2022 no one had appeared

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on behalf of the present petitioner, thus, the said application was dismissed on account of non-appearance. It is further submitted that a second application was moved on behalf of the petitioner for setting aside the order dated 02.09.2021 and reply to the said application was filed on 18.04.2023 and thereafter the matter was fixed for consideration, however, no one had appeared on behalf of the petitioner and thus, he was again proceeded against ex-parte. It is submitted that ultimately, the final award was passed on 10.10.2023 which was passed ex-parte and thus, the petitioner through his counsel moved the third application on 23.01.2024 for setting aside the ex-parte award dated 10.10.2023, which application was dismissed vide the impugned order dated 19.07.2024. It is submitted that on each of the occasion, it was the fault of the counsel and not the petitioner as the counsel had not pursued the case properly. It is thus submitted that the application filed by the petitioner for setting aside the ex-parte award dated 10.10.2023 be allowed and the petitioner be granted an opportunity to file the written statement and to oppose the application for compensation filed by the respondent.

3. This Court has heard the learned counsel for the petitioner and has perused the paper book and finds that the impugned order dated 19.07.2024 has been rightly passed and the present petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

4. It is not in dispute that the respondents, who were the widow and minor children of the deceased-Madan, had filed a claim petition under the Employee's Compensation Act, 1923 on the averments that the said

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Madan was working as labourer at milk dairy of respondent on monthly wages of Rs.20,000/- and was 28 years of age at the time of accident and on 24.11.2020 at about 04:00 AM when the deceased-Madan was working under the employment of respondent, he got entangled with an electric wire and died on the spot due to electric shock and with respect to the same, even an FIR was registered. It was further averred that since no compensation had been paid, thus the claim petition had been filed. The said claim petition was allowed vide order dated 10.10.2023 and an amount of Rs.11,52,137/- was directed to be paid to the respondents by the petitioner and the same was directed to be deposited within a period of 30 days from the date of the said order failing which the petitioner would have been liable to pay interest @ 12% per annum on the whole amount. A perusal of the said order would show that the respondents had got statements of AW-1, AW-2 and AW-3 recorded as well as had produced on record Ex.P1 to Ex.P5 and thereafter the case was decided. The petitioner had thereafter moved an application dated 16.11.2023 for setting aside the ex-parte award dated 10.10.2023 which was dismissed by the Commissioner under the Employee's Compensation Act, 1923 vide order dated 19.07.2024, which order has been challenged by the petitioner before this Court.

5. A perusal of the admitted facts would show that the petitioner has made every endeavour to delay the proceedings and to avoid the liability, which has been fastened upon him vide award dated 10.10.2023. It is not disputed before this Court that the petitioner had appeared and was being represented but was thereafter proceeded against ex-parte on

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02.09.2021 as no one had appeared on his behalf. Thereafter, the petitioner was represented by Sh.Sunil Balyan, Advocate, who appeared on his behalf and moved an application before the Court of the Commissioner on 24.05.2022 for setting aside the ex-parte order. A reply was filed to the said application on 12.07.2022 and the matter was fixed for consideration and on 30.08.2022 since no one had appeared on behalf of the petitioner, the application filed by the petitioner was dismissed on account of non-appearance. No valid reason is forthcoming as to why the application filed by the petitioner for setting aside the ex-parte order dated 02.09.2021 was not followed with due diligence, in spite of the fact that the petitioner had the knowledge of the proceedings and had himself engaged a lawyer.

6. It is not in dispute that on 07.02.2023 the evidence of the respondents was recorded and Sh.Vikas Yadav, Advocate, had appeared on behalf of the petitioner and had moved the second application for setting aside the ex-parte order dated 02.09.2021 to which reply was filed on 18.04.2023 and when the case was fixed for consideration, on that date also, no one had appeared on behalf of the present petitioner and thus, again the present petitioner was proceeded against ex-parte and the matter was fixed for ex-parte arguments. No plausible reasons have been given even with respect to not pursuing the said second application diligently. Since the petitioner, in spite of having knowledge of the proceedings, had not joined the proceedings, the Commissioner had passed the award dated 10.10.2023 after considering the documents and evidence on record. It is also not in dispute that the same Advocate Mr.Vikas Yadav had filed an application on

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23.01.2024 for setting aside the ex-parte award dated 10.10.2023, which was dismissed vide the impugned order dated 19.07.2024, after noticing the earlier conduct of the applicant and also the fact that the earlier applications filed for setting aside the ex-parte proceedings were not duly pursued. It was further observed in the impugned order that the application which was filed on 23.01.2024 was neither signed by the present petitioner nor any affidavit was filed along with the application nor there were any justifiable reasons for setting aside the ex-parte award dated 10.10.2023 and that the application was also barred by limitation. The said observation has not been shown to be either illegal or perverse before this Court.

7. Once the present petitioner had appeared and was aware of the proceedings and had even moved applications for setting aside the ex-parte order dated 02.09.2021 but had not pursued the said applications which is why the said applications had been dismissed, it cannot be said that the present application filed by the petitioner for setting aside the ex-parte award was bonafide. With respect to the sole argument raised on behalf of the petitioner to the effect that it was the fault of the counsel, who had not appeared in the proceedings, it would be relevant to note that on a pointed query raised by this Court, learned counsel for the petitioner has fairly submitted that no complaint has been filed in the Bar Council against the said counsel and even a perusal of the observations made in the impugned order would show that the second application for setting aside the ex-parte order was filed by Sh.Vikas Yadav, Advocate, which was not pursued and thereafter the present application dated 23.01.2024 was also filed by the



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same counsel. Moreover, it was the duty of the petitioner to diligently follow his case and he should have enquired about the proceedings and the decision in the application(s), which had been filed on his behalf.

8. Keeping in view the abovesaid facts and circumstances, the impugned order is upheld and the revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

January 21, 2025.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No