

(2013) 05 RAJ CK 0217

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 174 of 2013 in Civil Writ Petition No. 2802 of 2012

Balaji Iron and Foundry

APPELLANT

Vs

Satya Narain Puri and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 3 WLN 516

Hon'ble Judges : Narendra Kumar Jain, J; Meena V. Gomber, J

Bench : Division Bench

Advocate : Rajesh Mootha, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard the learned counsel for appellants. This intra-Court appeal is directed against the order of the Single Bench dt. 29.05.2012, whereby the writ petition of petitioner/appellant, has been dismissed.

2. There is a delay of 190 days in filing the appeal. An application under Sec. 5 of the Limitation Act has been filed for condonation of delay, wherein delay in filing the appeal has been explained in the following manner:-

1. That the appellant has today filed a special appeal alongwith this stay application before this Hon"ble Court and they have every hope of success.

2. That after passing the order dt. 29.05.2012 the appellant was out of station for sometime and sometime also consumed in arrangement of the expenses of the appeal and advocate fees. Therefore due to above reason delay was caused in filing the appeal which is bonafide and beyond the control of the appellant.

3. That if delay in filing the special appeal (writ) is condoned then it will not prejudice to the respondent and matter may be decided on merits.

3. From the contents of the application under Sec. 5 of the Limitation Act, as reproduced above, we are of the view that delay in filing the appeal has not been

explained satisfactorily by the appellant, so as to condone the same. In our view, application under Sec. 5 of the Limitation Act deserves to be dismissed.

4. That apart, it is also on record that despite service of notice, the appellant did not appear before the Labour Court, Jaipur and an ex-parte Award was passed against it. Thereafter, an application for setting aside the ex-parte Award was filed before the Labour Court, but the appellant did not appear to prosecute the application and the same was dismissed in default. The appellant, thereafter, filed another application for recalling of the order, whereby its application to set aside the ex-parte Award was dismissed, but the said application was also dismissed in default. Thereafter, again an application was filed for recalling of the order, whereby the above application was dismissed. The learned Labour Court, after considering all the facts and circumstances, dismissed the said application also. Thereafter, a writ petition came to be filed by appellant/petitioner, but the same has been dismissed by the learned Single Judge vide order impugned dt. 29.05.2012, which is under challenge in this intra-Court appeal.

5. From the above facts, it is clear that from very beginning the appellant was negligent and even after dismissal of its writ petition, the intra-Court appeal has not been filed in time. It is also relevant to mention that the learned Labour Court had recorded a finding that the workman worked for more than 240 days and there was violation of Section 25F of the Industrial Disputes Act. However, the learned Labour Court has awarded only 20% back wages, instead of full back wages.

6. After considering all the facts and circumstances of the case, we do not find any error in the Award of the Labour Court as well as the order of the Single Bench, so as to interfere in the same.

7. In view of above, application under Sec. 5 of the Limitation Act stands dismissed.

8. Consequently, the Special Appeal is also dismissed being barred by limitation as well as on merits also. Stay Application No 1380/2013 also stands dismissed.