
(2008) 11 BOM CK 0021

In the Bombay High Court

Case No : O.O.C.J. Notice of Motion 156 of 2008 and W.P. No. 1952 of 2003

Balu Baburao Mhatre

APPELLANT

Vs

Bharat Kumar Motilal and Company

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Citation : (2009) 2 LLJ 547

Hon'ble Judges : Ranjana Desai, J;K.K. Tated, J

Bench : Division Bench

Advocate : Rajesh Ghehani, for the Appellant; Manoj Gujar, instructed by C.R. Naidu and Co., for the Respondent

Judgement

1. This Notice of Motion is taken up by the appellant (Original respondent) praying that the delay of 465 days in filing the present appeal be condoned. We have taken on record the affidavit of Mr. Mohandas Mithalal Jain partner of the respondent-company.

2. We have heard the learned Counsel for the appellant at some length. He has drawn our attention to the affidavit in support of the Notice of Motion. In the affidavit, following explanation is offered:

I say that the aforesaid Writ Petition was being handled by the Union through their advocate Shri Rajesh Ghehani. I say that I was in constant touch with the union office bearers and was enquiring the status of the Writ Petition from the office bearers of the Union. I say that it appears that after the order dated September 5, 2006 was passed, the advocate had sent the file back to the Union for instructions along with the ordinary copy of the said order passed in the writ Petition. However, the said file was mixed up with some other papers and hence the Union was unable to inform me about the status of the matter. I say that it was only during the Christmas Vacation of 2007 when the file was discovered by the Union and it was found that the order was passed by the learned single Judge on September 5, 2006. I say that only on January 3, 2008 the advocate

appearing for me applied for the certified copy of the order which is still to be received. I say that the aforesaid Appeal is now being filed on the basis of the copy down-loaded by the appellant's advocate from the Internet. I say that there is a delay of about one year three months i.e. about 465 days in filing the aforesaid Appeal and therefore I pray that this delay in filing the Appeal may be condoned.

3. We are not satisfied with this explanation. The appellant has merely stated that the file sent by his advocate was mixed up with some papers in the office of the union and the union was unable to inform him about the status of the matter. It is further stated that it is only in Christmas vacation in 2007 that the file was discovered by the union. Thereafter, when his advocate got to know about the impugned order, he applied for certified copy thereof on January 3, 2008. According to the appellant certified copy is still not received. The appeal is filed on a simple copy. It is not possible to accept this explanation. We find this explanation to be extremely vague.

4. In any case, even on merits the appellant does not have a good case. By the impugned order the learned single Judge confirmed the judgment and award dated April 10, 2002 passed by the Labour Court at Mumbai as regards order of reinstatement with effect from December 2, 1992. He has however, modified the order regarding payment of back wages. He has directed that the respondents shall pay to the appellant 50% of the back wages from March 18, 1997 till the date of his reinstatement and the claim for back wages for the period from December 2, 1992 to December 31, 1995 is rejected. The appellant is aggrieved by the rejection of his claim for back wages for the period from December 2, 1992 to December 31, 1995. In the impugned order the learned single Judge has rightly noted that the appellant has in his cross-examination stated that in the year 1991 he has purchased residential premises for Rs. 50,000/- and the said amount was paid by him by obtaining loan and before 1995 the loan was repaid. The learned single Judge has therefore, rightly come to a conclusion that since the repayment of loan was completed before 1995 it cannot be said that the appellant was not gainfully employed during this period. Besides, the learned single Judge has also observed that the appellant has not stated in his evidence that from December 2, 1992 to December 31, 1995 he was not employed or that he had no source of income. The learned single Judge therefore cannot be faulted for rejecting the claim for back wages for the said period. In the circumstances, we are not inclined to grant the prayers made in the motion. Notice of Motion is dismissed.