
(2013) 08 MP CK 0325
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2326 of 2012

Emerald Industried Ltd.

APPELLANT

Vs

Smt. Ganga

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5
Workmens Compensation Act, 1923 — Section 30, 30(3), 4A

Citation : (2013) 08 MP CK 0325

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; R.V. Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—By filing this petition under Article 227 of Constitution petitioner has prayed for following reliefs:

- i- That, this Hon''ble Court may kindly be pleased to allow this petition.
- ii- That, the orders dated 19-09-2011 Annexure P/1 and the award dated 02-09-2004 Annexure P/2 so far as it relates to directing to the petitioner-company to make the payment of interest on the ground of compensation is concerned may kindly be directed to be set aside.
- iii- Any just, suitable and proper remedy which is found in favour of the petitioner may kindly be issued including the costs be awarded.

The case No. 240/B/W.C. Act/2000 (fatal) was filed by the respondents before the Commissioner in Workmen Compensation Act (labour Court). Labour Court has passed its award dated 02-09-2004 (Annexure P/2). Labour Court allowed the application and granted compensation to the respondents. In addition,

penalty and interest was also directed to be given. An application u/s 152 of CPC is filed by the petitioner Annexure P/3 before the said authority after 6 years. In the said application which has been dismissed by impugned order dated 19-09-2011, it is contended by the petitioner that there exists a clerical/typographical error in the main order/award. To elaborate it, it is contended that in view of judgment of Supreme Court New India Assurance Co. Ltd. Vs. Shiv Singh and Another, , the interest is to be paid by the Insurance Company thus, it is contended that there occurred a clerical error in the order which should have been corrected in exercise of power u/s 152 of CPC.

2. Learned Court below has rejected the same by the impugned order. Shri Katare submits that he cannot be relegated to avail the alternative remedy available u/s 30 of Workmen's Compensation Act, 1923 (the Act). He submits that alternative remedy is not bar for exercise of writ jurisdiction. In addition, he relied on Ved Prakash Garg Vs. Premi Devi and others, , Amar Singh and Others Vs. Pooran and Others, , Om Prakash Marwaha (D) thr. LRS. and Others Vs. Jagdish Lal Marwaha (D) thr. LRS., , State of Madhya Pradesh and Others Vs. Ram Prakash Sharma and Others, and Jang Singh Vs. Brijlal and Others, to submit that such error can be corrected in the present jurisdiction.

3. Shri R.V. Sharma relied on certain provisions of the Act and rules and supported the order.

4. I have heard learned counsel for the parties and perused the record.

5. Petitioner has challenged the award dated 02-09-2004. By the said award, the Commissioner, Workmen Compensation has directed to pay interest on the petitioner. The relevant portion of Section 30 of the Act reads as under:

30. Appeals:- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-

(a) ** ** *

(aa) an order awarding interest or penalty u/s 4-A;

6. A bare perusal of the aforesaid provision makes it clear that the said award is appealable. The methodology to prefer the appeal is mentioned in enabling provision (Section 30). As per Section 30(3), the provisions of Section 5 of Limitation Act are made applicable. Thus, I am unable to hold that there exists no provision of preferring appeal against the operation of the award whereby the interest has been granted.

7. Apart from this, as per Rule 41 of Workmen's Compensation Rules, 1924 made under the Act only certain provisions of CPC were made applicable. It does not include Section 152 of CPC. Apart from this, I am unable to hold that granting of compensation against the petitioner by the Court below is a clerical error. Legal error cannot be corrected by invoking Section 152 of CPC. Section 152 is not borrowed under the rules. For this reason, I am unable to hold that

the Court below has committed any error in rejecting the application of petitioner u/s 152 of CPC. This is settled in law that when there is statutory, efficacious and alternative remedy available, in a routine manner, interference should not be made in writ jurisdiction. I am not inclined to short circuit the procedure mentioned in the Act. Petitioner if aggrieved, may avail the remedy of appeal available under the Act. The judgment cited by the petitioner are not applicable in the facts and circumstances of the present case. None of the judgment cited by Shri Katare deal with the specific provision of Workmen's Compensation Act. At the cost of repetition, in my opinion, since there is specific remedy available to the petitioner to prefer the appeal before the High Court, I am not inclined to entertain this petition under Article 227 of Constitution.

With the aforesaid, the petition is dismissed.