
(1992) 02 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 1743 of 1985

Kiran Sizing

APPELLANT

Vs

Iqbal Ahmed Kamruddin and Another

RESPONDENT

Date of Decision : 26-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Payment of Wages Act, 1936 — Section 15

Citation : (1993) 3 LLJ 665

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : A.V. Bukhari and I.A. Saiyad, for the Appellant; S.D. Puri and Kuldeep Singh, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—This Writ Petition, under Article 227 of the Constitution of India, impugns an order of the First Labour Court, Thane dated 3.1.1985, refusing to set aside an exparte order dated 22nd April, 1981 made in Application (PWA) No. 191 of 1978, exercising jurisdiction as the Authority under the provisions of the Payment of Wages Act.

2. The facts material for disposing of the present petition are as follows:

3. On 10.4.1978 the First Respondent issued a notice to the Petitioner-Employer alleging therein that he was an employee of the Petitioner's establishment at Bhiwandi and that he was entitled to certain amounts under the provisions of certain statutes which were alleged to have been wrongfully withheld from him. The Petitioner-Employer, by its reply dated 14th April, 1978, controverted all the allegations in the said notice. It denied that the first Respondent had been or was employed in its Industrial Establishment or that the first respondent was entitled to any amounts as claimed in the notice. The first respondent thereafter filed Application (PWA) No. 191 of 1978 u/s 15 of the Payment of Wages Act. This application was entertained and disposed of by the Authority under the Payment

of Wages Act by an exparte order dated 22nd April, 1981. By the said exparte order the Petitioner was directed to pay a sum of Rs. 6,315/- together with Rs. 25/- as penalty and Rs. 490/- as Court fee to the State Government.

4. The Petitioner-Employer took out Miscellaneous Application No. 2 of 1981 for setting aside the said exparte order and for restoring the main application to file. The ground on which the exparte order was sought to be set aside was that there was a genuine mistake made by the Petitioner's Advocate in noting down the date of hearing. This mistake was occasioned by the fact that the same Advocate was appearing in Reference (EDA) No. 42 of 1979, a proceeding under the Industrial Disputes Act, and Application (PWA) No. 191 of 1978, an application under the Payment of Wages Act, in both of which the Petitioner was the Respondent. The reference was adjourned to 29th April, 1981 and, by mistake, since both the matters were pending before the same Court, the Advocate for the Petitioner noted down that the date of hearing of the Payment of Wages Application also as 29th April, 1981, instead of 22nd April, 1981. The miscellaneous application for setting aside the exparte order, was contested by the first respondent.

5. By the impugned order dated 3.1.1985 the second Respondent-Payment of Wages Authority, dismissed the application on a somewhat strange ground. Though the second Respondent was of the view that the circumstances pleaded in the application were true and that there was good and sufficient cause for setting aside the exparte order dated 22.4.1981, it was of the view that the application had to be dismissed because the application had been styled as an application under Order 9, Rule 13 of the CPC which was patently misconceived. The Second Respondent took the view that an application for setting aside an order made under the Payment of Wages Act could not be entertained under Order 9, Rule 13 of the CPC which was not applicable to such proceedings and although on merits there was sufficient cause for setting aside the order, the application being misconceived, had to be dismissed. In this view of the matter, by the order, dated 3.1.1985, the

Petitioner's Miscellaneous Application No. 2 of 1981 came to be dismissed by the Second Respondent. The Petitioner has by the present petition impugned both the exparte orders in the main application dated 22nd April, 1981 and the order dated 3.1.1985 dismissing its miscellaneous application for setting aside the exparte order.

6. After having heard the learned counsel, I am satisfied that the second respondent took an unduly narrow and technical view of the matter. If he was satisfied that the application made by the petitioner for setting aside the exparte order dated 22.4.1981 was bona fide and a good and sufficient cause for setting aside the exparte order was made out, in my view, it was not proper to dismiss the application solely because the application was purported to be made under Order 9, Rule 13 of the Code of Civil Procedure. The payment of Wages Authority ought to have treated it as an application validly presented under the applicable

relevant provisions of law and entertained it on merits. Instead of doing so it was rejected by taking the hyper-technical view. The order is, therefore, erroneous and amounts to failure to exercise jurisdiction vested in the authority. The impugned order dated 3.1.1985 is, therefore, liable to be quashed and set aside.

7. In the result, the petition succeeds. The order, dated 3.1.1985, made in Miscellaneous Application No. 2 of 1981 and the ex parte order dated 22nd April, are hereby quashed and set aside. Application (PWA) No. 191 of 1978 is restored and remanded for trial and disposal according to law to the concerned Authority under the Payment of Wages Act, who shall dispose it off as expeditiously as possible.

8. Rule made absolute accordingly.

9. There shall, however, be no order as to costs in the circumstances.