
(1986) 09 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3995 of 1982

Mahadeo Prasad Jagannath Prasad

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 17-09-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Payment of Wages Act, 1936 — Section 15, 15(1), 15(2), 15(3), 15(4)

Citation : (1987) 1 AWC 47

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : V.P. Misra, for the Appellant;

Final Decision : Allowed

Judgement

B.L. Yadav, J.—This petition under Article 226 of the Constitution of India is directed against the order dated 31-10-1982 passed by the District Judge, Mirzapur in an appeal preferred u/s 17 of the Payment of Wages Act, 1952 (for short the Act) and the order dated 5-6-1981 passed by the Prescribed Authority u/s 15 of the Act.

2. The facts of the case are few and simple Respondent No. 4 Nizamuddin made an application u/s 15(2) of the Act claiming a sum of Rs. 5,569-66 as the wages due to him from the Petitioner in connection with the weaving of the carpets. It was alleged that the Petitioner as an employer was not paying the said amount to Respondent No. 4, hence the necessity for making the application. The said application for payment of wages was contested by the Petitioner denying the allegations including that the Respondent No. 4 was not an employee of the Petitioner and that the Petitioner was not the employer of Respondent No. 4. It was also stated that the Respondent No. 4 was employed on the basis of contract and that due to some defects in the carpets there were some deductions made in the amounts and it was alleged that after adjustment of the entire amount only Rs. 385-60 were payable to him by the Petitioner.

3. It appears that a number of dates were fixed and ultimately 8-1-1981 was the date fixed and on that date the Presiding Officer was on leave. Consequently 19-2-1981 was the date fixed and on that date and thereafter on 19-2-1981, 26-2-1981 and 28-2-1981 the Presiding Officer was on leave, hence the case could not be taken up. Again 3-3-1981 was the date fixed and the next date was 6-3-1981 on which date a reply was filed, 12-3-1981 was the date fixed and again on 23-3-1981 the Presiding Officer was out of station. Similarly he was out of station on 25-3-1981 and also on 2-4-1981 and ultimately 10-4-1981 was the date fixed when the Petitioner was absent and the case was ordered to proceed ex-parte against him and on 7-5-1981 evidence of Respondent No. 4 was taken and 26-5-1981 was the next date fixed and on that date arguments were heard and judgment was reserved, on 5-6-81 the ex-parte order was pronounced against the Petitioner.

4. The Petitioner preferred an appeal against the ex-parte order dated 5-6-1981 u/s 17 of the Act but the same was dismissed by the impugned order dated 31-10-1981 as the memorandum of appeal was not accompanied by a certificate that the amount payable under the order or direction has been deposited. It is against these orders that the present petition has been filed.

5. The learned Counsel for the Petitioner urged that u/s 17(1-A) of the Act it was provided that unless the memorandum of appeal was accompanied by a certificate by the authority to the effect that the Appellant had paid the amount, under the direction, the appeal would not be maintainable. But in the instant case the Petitioner had made an application to the Prescribed Authority for making a deposit, but the Prescribed Authority rejected the same by stating that the amount under the direction or the order against which appeal was filed, cannot be deposited before him. True copy of the application and the order passed thereon has been filed as Annexure "5" to the writ petition. Hence the Petitioner made an effort and ultimately another application was filed before the District Judge and some time was granted to make payment by the date fixed. But by that date the Petitioner was not in a position to deposit the requisite amount on account of unsound financial position and under law no amount can be deposited before the appellate court. He accordingly urged that the Prescribed Authority erroneously rejected the application for payment of the amount so required and the impugned order cannot be sustained as it is based on the fact that the Petitioner did not make the deposit of the amount asked to be deposited under the direction of the order appealed against. The bonafide mistake appears to be of the Prescribed Authority who did not permit the Petitioner to deposit the same and the Petitioner should not suffer for the same.

6. The learned Counsel for the Respondent No. 4, on the other hand, urged that the impugned order was correct and that the Petitioner did not deposit the amount before the Prescribed Authority inspite of the time being granted by the appellate court, he did not make deposit. Consequently the appeal has correctly been dismissed and the ex-parte order passed by the Prescribed Authority was

also correct. This Court need not interfere under the circumstances of the case under Article 226 of the Constitution.

7. The only point which requires determination is as to whether the appeal filed by the Petitioner was maintainable u/s 17 of the Act. Section 17 of the Act enacts that an appeal shall lie before the Court of Small Causes and elsewhere before the District Court under Sub-section (3) or Sub-section (4) of Section 15 (fifteen) of the Act. But Sub-section (1-A) was added by Act No. 53 of 1964 which came into force on 1-2-1965. Sub-section (1-A) of Section 17 was just like a "proviso" and enacts that no appeal would lie unless the memo of appeal is accompanied by a certificate by the Authority. The word "Authority" has not been defined u/s 2 of the Act. But as a matter of fact as the principle of interpretation is that every part of the statute must be harmoniously interpreted. Section 17 has to be read with Section 15, thereby the only conclusion possible is that the "authority" means "the Prescribed Authority" as indicated in Section 15(1) of the Act. The amount was to be deposited with the Prescribed Authority. The Petitioner made an application (Annexure "5") and it appears that on this application to make deposit the order was passed that no amount can be deposited before the Prescribed Authority and the same may be deposited in the appellate court. This order was dated 3-7-1981. The Petitioner thereafter made an application but the amount could not be deposited within the extended period. In paragraph 10 of the counter affidavit it has, however, been denied that no such application as stated by the Petitioner under paragraph No. 12 of the petition was filed. But from the perusal of Annexure "5", to the writ petition which appears to be a photostat copy with original orders, it is clear that the application was made by the Petitioner.

8. I am of the view that the bare reading of Section 17(1-A) of the Act makes it evident that the amount decreed by the Prescribed Authority, was to be deposited with the "authority" which obviously mean's the "Prescribed Authority". The application of the Petitioner before the Prescribed Authority for making the deposit of the amount could not have been rejected. It was apparently a mistake of the Court or the Prescribed Authority. There is a Maxim "ACTUS CURIAE NE MINEM CRAVRIT" which obviously means that no litigant should suffer for the mistake committed by the Court. There is another Maxim "ACTUS LEGIS NEMINI EST DAM NO SUS" which connotes that an act in law shall prejudice no man. It appears that the decretal amount could not be deposited and receipt could not accompany the memo of appeal as the Prescribed Authority passed the order that the amount cannot be deposited there, and the same can be deposited only before the appellate court. It is not a mistake of the Petitioner. Further it was on account of the order passed by the Prescribed Authority, may be under some bonafide mistake, that the amount could not be deposited. As a consequence thereof the appeal of the Petitioner was held to be not maintainable. In view of these facts the order in appeal cannot be sustained.

9. I was considering to remand the case to the appellate court, but looking on a

number of dates fixed in the case, as is apparent from the copy of the order sheet (Annexure "3" to the writ petition), the Prescribed Authority himself was on leave or out of station on so many dates. It is just on one day, may be under some miscalculation or some mistaken idea that the Petitioner was absent and the case was ordered to proceed ex-parte on 10-4-81 and thereafter on 7-5-81 Respondent No. 4 was permitted to lead the evidence and thereafter arguments on his behalf appear to have been heard and the Prescribed Authority allowed the application of Respondent No. 4 by order dated 5-6-81, which was challenged in the appeal. Under the peculiar circumstances of the case I am of the view that the Petitioner should be given an opportunity to lead evidence before the Prescribed Authority. The concept of justice is that the parties must be given opportunity of being heard and lead evidence and not to deprive them of opportunity, either to lead evidence in support of their case or from being heard on merits. In such matters where the case has been decided ex-parte, a reasonable and certainly a liberal view must be taken so that the party deprived of leading evidence and being heard may get an opportunity. I am accordingly of the view that the ex-parte order passed by the Prescribed Authority also deserves to be quashed.

10. In view of what has been stated above, the impugned orders cannot be sustained and the petition deserves to be allowed.

11. In the result, the petition succeeds and is allowed and the impugned orders dated 31-10-1982 and 5-6-1981 passed by Respondent Nos. 1 and 2 respectively are hereby quashed. The case is remanded back to the Prescribed Authority to decide it afresh in accordance with law and in the light of the observations made above. The case has certainly dragged on far too long and what is, however, required is expedition. In the circumstances of the case I refrain from making any order as to costs.