

(2018) 03 DEL CK 0291

In the Delhi High Court

Case No : Civil Writ Petition No. 2047 Of 2018

M/S Gulmehar Green Producer Company

APPELLANT

Vs

Commissioner Under Employees Compensation Act (North-East) Labour Department, Govt. Of NCT Of Delhi & Anr

RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Civil Procedure, 1908 — Section 115
Indian Penal Code, 1860 — Section 288, 337
Employee's Compensation Act, 1923 — Section 3, 4, 4(A)3(b), 12(2), 30, 30(1)
Motor Vehicle Act, 1988 — Section 149(1), 149(2)

Citation : (2018) 03 DEL CK 0291

Hon'ble Judges : Vinod Goel, J

Bench : Single Bench

Advocate : Raveesh Thukral, Jyoti Taneja

Final Decision : Dismissed

Judgement

Vinod Goel, J

CM No. 8439-8440/2018 (exemptions)

Exemptions allowed subject all just exceptions.

Applications stand disposed of.

W.P. (C) 2047/2018 & CM No. 8438/2018 (for stay)

1. On an advance copy having been served, Ms.Jyoti Taneja, Advocate appears for respondent no.1.

2. The petitioner has invoked the writ jurisdiction of this Court under Article 226/227 of the Constitution of India for setting aside the order dated

01.08.2017 by which ex-parte Award was passed by Commissioner Employeesâ? Compensation (in brief â??CECâ?) against it granting

Rs.7,13,086.08 as compensation under the Employee's Compensation Act, 1923 (in short 'the EC Act') in favour of the respondent No.2 and

subsequent order dated 22.12.2017 passed by 'CEC' in the case by which its application dated 14.09.2017 to set aside the Award dated

01.08.2017 was dismissed.

3. The brief facts of the case are that the respondent No.2 was working as Paper Mixer with the petitioner and on 16.04.2016 at about 10:00 AM

while she was working on the calending machine she suffered injuries during the course of the employment with the petitioner. She was taken to Lal

Bahadur Shastri Hospital where she was medico legally examined by the Medical Officer. An FIR bearing No.216/2016 under Sections 288/337 IPC

was registered on 16.04.2016 with Police Station Ghazipur, Delhi. She filed the claim petition under Section 3 and 4 of the EC Act. Despite service of

the summons, the petitioner did not appear and was proceeded against ex-parte. After considering the evidence on record, the 'CEC' awarded

Rs.7,13,086.08 along with interest @ 12% p.a. from the date of accident in favour of respondent No.2 and against the petitioner.

4. After granting the Award, a Show Cause Notice was issued by CEC to the petitioner as to why penalty not exceeding 50% of the compensation be

not imposed upon it under Section 4 (A)(3) (b) of the Act. The petitioner appeared before the CEC on 28.08.2017 but did not file any reply and vide

order dated 31.08.2017 the petitioner was directed to deposit Rs.3,56,543/-as penalty with CEC, District East-1, Delhi.

5. The petitioner filed an application dated 14.09.2017 for setting aside the order dated 28.07.2017 pleading that they have not received the summons

in the matter and they have been appearing in the Court of Metropolitan Magistrate. It was also pleaded in the application that on 16.04.2016 the

petitioner came to work in the morning at its production unit and was working with the paper recycling unit and suffered injury when her hand got

stuck in the machine. By order dated 21.12.2017, the application of the petitioner was dismissed by the CEC.

6. Admittedly, the petitioner has not filed any appeal against the impugned orders as prescribed in Section 30 of the Act. In his submissions, learned

counsel for the petitioner does not dispute the employment of respondent No.2 with them at the relevant time. It is also not disputed that on

16.04.2016, the respondent No.2 while operating the machine sustained injuries in her hand and was taken to LBS Hospital. He submits that Sh.

Anurag Kashyap had already resigned as Director from the petitioner company in the year 2015 and he had only seen the respondent No.2/claimant

after she was discharged from the Hospital and dropped at her home. He submits that the petitioner is not able to file appeal as prescribed in Section

30 of the Act as there is requirement of pre-deposit of the awarded amount and the petitioner/company is not in a position to deposit the same. He

submits that the petitioner company is engaged in the process of providing income generation opportunity to the waste picker's community and also

makes use of the daily waste flowers from the Ghazipur Flower Market, Delhi and does not have sufficient earnings. Learned counsel for the

petitioner relies upon a judgment of Madras High Court in M. Thangavel Vs. The Deputy Commissioner of Labour and Ors. Manu/TN/1691/2013

wherein it was held that although Section 30 of "The Act" enjoins a party to file statutory appeal before the High Court under Section 30 (1) of

the Act unless substantial question of law is involved in the appeal. It was further held that the writ petition based on factual aspects is perfectly

maintainable in law as there is no alternative and adequate remedy of filing of appeal under Section 30 of the EC Act.

7. Here it is profitable to refer to Section 30 of the EC Act which reads as under:-

30. Appeals.-

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

(a) an order awarding as compensation a lump sum whether by way of redemption of a half- monthly payment or otherwise or disallowing a claim in

full or in part for a lump sum;

(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased employee, or disallowing any claim of a person

alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to

conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than

an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the

order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause

(a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with

him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Indian Limitation Act, 1963 (36 of 1963), shall be applicable to appeals under this section.

8. A bare reading of the provision shows that an appeal shall lie to the High Court from the orders of the Commissioner awarding compensation,

interest or penalty; refusing to allow redemption of a half-monthly payment; for providing the distribution of compensation among the dependants of a

deceased or disallowing any claim of a person alleging himself to be such dependent; allowing or disallowing any claim under Section 12(2); or order

refusing to register a memorandum of agreement or registering the same. It is further provided that no appeal shall lie against any order unless a

substantial question of law is involved in the appeal. It is also provided that no appeal by the employer shall lie unless the memorandum of appeal is

accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order

appealed against.

9. It is trite when petitioner is having an alternative effective statutory remedy of appeal, the writ petition under Article 226/227 of the Constitution of

India cannot be allowed to be entertained.

10. In a case before the Honâ??ble Supreme Court in *Sadhna Lodh vs. National*

Insurance Company Ltd. 2003 (3) SCC 52,4 where instead of challenging the award of MACT by way of appeal, the insurer preferred a writ petition under Article 226/227 of the Constitution of India on the ground that the insurer has limited grounds available to challenge the award of the Tribunal. The Honâ??ble Supreme Court has held:-

â??6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see National Insurance Co. Ltd. v. Nicolletta Rohtagi [(2002) 7 SCC 456 : 2002 SCC (Cri) 1788].)This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

8. For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Articles 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law.â??

11. Similarly in *Transport & Dock Workers Union vs. Mumbai Port Trust* 2011 (2) SCC 575, the Honâ??ble Supreme Court held that:-

â??14. In our opinion the writ petition filed by the appellants should have been dismissed by the High Court on the ground of existence of an alternative remedy under the Industrial Disputes Act. It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative remedy available to the appellant. In this case there was a clear alternative remedy available to the appellants by raising an industrial dispute and hence we fail to understand why the High Court entertained the writ petition. It seems to us that some High Courts by adopting an over liberal approach are unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. However, we may also consider the case on merits.â??

12. In the case *Sadhna Lodh (supra)* It was argued that right of an appeal available under the Motor Vehicle Act to the Insurer is provided under Section 149 (1) of the Motor Vehicle Act on limited grounds and for that reason the insurer has challenged the Award passed by the Motor Accident Claim Tribunal by way of writ petition under Article 226/227 of the Constitution of India. However, the Honâ??ble Supreme Court has held that

since the insurer has a remedy by filing an appeal before the High Court and the High Court ought not to have entertained the petition under Article 226/227 of the Constitution of India.

13. The petitioner being employer has a limited remedy to challenge the impugned Award of the CEC under Section 30 of the EC Act, 1923 on question of law. The petitioner in guise of the present writ petition intends to evade the requirement of pre-deposit of the awarded amount under section 30 by not filing the appeal in the High Court against the impugned orders which cannot be permitted.

14. In view of the principle laid down in the judgment of *Sadhna Lodh (supra)* and *Syed Yakoob (supra)* of the Honâ??ble Supreme Court, the writ petition cannot be allowed to be entertained under Section 226/227 of the Constitution of India when the alternative efficacious suitable remedy of appeal is available to the appellant under Section 30 of the Act.

15. The writ petition and stay application being CM No.8438/2018 are accordingly dismissed.