
(1992) 05 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1337 of 1991

Sarpanch, Gram Panchayat and Another	APPELLANT
Vs	
Smt. Tara Bai and Others	RESPONDENT

Date of Decision : 13-05-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (1992) 102 PLR 180

Hon'ble Judges : A.S. Nehra, J

Bench : Single Bench

Advocate : C.B. Goel, for the Appellant; Harsh Aggarwal, for Respondent Nos. 1 to 4 and B.S. Rana, for the Respondent

Final Decision : Allowed

Judgement

A.S. Nehra, J.—The appellants have filed this appeal against the orders dated 29.3.1990 and 3.12. 1990 passed by the Commissioner under the Workmen's Compensation Act.

2. Briefly stated, the facts of the case are that Smt. Tara Bai and others filed a petition u/s 10 of the Workmen's Compensation Act, 1923 (hereinafter referred to the Act) against the appellants and Mangal son of Nant Ram. On 28.12.1989, the following order was passed by the Commissioner :-

"Notice was sent to respondents Nos. 1 and 2 by registered post, but the same has been received back with the remarks that the "addressees were not found" Fresh notice shall go to the both respondents for 8.2.1990. Respondent No. 3 shall file the written statement."

On 8.2.1990, respondent No, 3, Mangal son of Narat Ram, filed his written statement. The appellants did not appear and, therefore, they were proceeded ex parte. It was mentioned in the order passed by the Commissioner that the notices were sent to the appellants on 8.1.1990 that neither the notices sent to the appellants on 8.1.1990 by registered post nor A.D.'s were received back.

Hence, it was presumed by the Commissioner that the notices had been served on the appellants and, therefore, ex pane proceedings were ordered against the appellants.

3. On 14.3.1990, respondent No. 3 Mangal son of Nant Ram, was deleted from the array of the respondents.

4. Smt. Tara Bai examined her witnesses and she and the other claimants were awarded compensation by the Commissioner on 23.3.1990.

5. The appellants filed an application on 31-5-1990 before the Commissioner for setting aside the ex parte order dated 29.3.1990, stating that the ex pane order is liable to be set aside, because the appellants have not been served. The notices sent to the appellants on 8.1.1990 by registered post were also not served on the appellants. The said registered covers are on the file of the case and it has been noted by the Postman on the said registered covers that the appellants could not be personally served as they were not found present in the village. Thus, the presumption that the appellants have been served has been rebutted by the report of the Postman

6. It has been further stated by the appellants in paragraph 3 of the application that they have come to know about the ex pane order on receipt of a letter from the Court on 1.8.5.1990 and, therefore, the present application is within time.

7. After hearing the learned counsel for the appellants and going through the record, I find that the registered A.D. covers sent to the appellants on 8.1.1990 were not served on the appellants and these registered covers were returned to the Commissioner with the report that the appellants were not found present in the village. Therefore, the order passed by the Commissioner to the effect that since the registered cover had not been received back, therefore, it would be presumed that the appellants had been served, is wrong.

8. The application filed by the appellants on 31.5.1990, for setting aside ex pane order dated 29 3.1990, is within time, because the appellants came to know about the ex parte order on 18 5.1990. Therefore, the application filed by the appellants was within time.

9. In view of the above-mentioned discussion, this appeal is allowed and the orders passed by the Commissioner on 29.3.1990 and 3.12.1990 are set aside. No Costs.

10. The parties, through their counsel, are directed to appear before the Commissioner under the Workmen"s Compensation Act, Gurgaon, on 20.7.1992.