
(2009) 11 OHC CK 0025
In the Orissa High Court

Shree Ranisati Processors (P) Ltd.

APPELLANT

Vs

Gayatri Panda

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151

Citation : (2010) 109 CLT 145 : (2010) 1 OLR 300

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Patel, J.—Learned Counsel appearing for the Petitioner-employer, Opp. Parties 1 to 3 claimants & Opp. Party No. 4 ESI Corporation are present.

2. Heard

3. In this writ application the Petitioner has assailed the Order Dated 14.7.2008 Annexure-4 passed by the Commissioner for Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack in W.C. Case No. 137-D/2005 rejecting Petitioner's application under Order 9 Rule 13 r/w Section 151 C.P.C to set aside exparte Judgment dated 12.2.2008.

4. The impugned order reads as follows:

xxx xxx xxx Advocate for the applicant as well as O.P. No. 1 are present. Advocate for the applicant filed written objection to the petition dated 9.6.2008 filed by O.P. No. 1. Heard. After careful consideration of the petition as well as objection, I am not inclined to accept the petition dt.9.6.08 since the Judgment has already been passed as per order dt.12.2.08. Further, I have no jurisdiction to consider the same. Hence rejected. Direct the O.P. No. 1 to deposit the award amount of compensation immediately in this Court within one month from receipt of this Order.

xxx xxx xxx

5. Obviously the only ground assigned by the Learned Commissioner for rejecting Petitioner's application under Order 9, Rule 13 C.P.C appears to be on the basis of the observation that he has no jurisdiction to consider the application. However, as has been pointed out by the Learned Counsel for the Petitioner, Rule 41 of the Workmen's Compensation Rules, 1924 provides that provisions under Order 9 shall apply to the proceeding before the Commissioner. Therefore, in passing the impugned order Learned Commissioner has illegally failed to exercise jurisdiction vested on him. Therefore, the matter has to be remanded back to the Commissioner for disposal of the application under Order 9 Rule 13 C.P.C. on merit.

6. Accordingly, the writ application is allowed. Order Dated 14.7.2008 passed by the Commissioner for Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack in W.C. Case No. 137-D/2005 is set aside. The matter is remanded to the Learned Commissioner with a direction to consider & dispose of the application under Order 9 Rule 13 read with Section 151 C.P.C. filed by the Petitioner afresh. Parties are directed to appear before the Commissioner on 7.12.2009 on which date the Learned Commissioner shall fix a date for hearing on the petition so as to pass final order on the application under Order 9 Rule 13 C.P.C. within two months thereafter.

7. Urgent certified copy of the order be granted on proper application.