
(2009) 03 DEL CK 0283

In the Delhi High Court

Case No : Writ Petition (Civil) No. 798 of 2009

Shri Narender Kumar Makhija

APPELLANT

Vs

International Amusement Ltd.

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)
Limitation Act, 1963 — Section 6, 7, 8, 9

Citation : (2009) 03 DEL CK 0283

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Prag Chawla and Nishi Chaudhary, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—The petitioner in the present writ has challenged the award dated 17th March, 2006 passed by the Labour Court-XII in LCA No. 6 of 2005 titled Narender Kumar Makhija v. International Amusement Ltd.

2. By virtue of the impugned award, the application of the petitioner u/s 33-C(2) of the Industrial Disputes Act, 1947 was dismissed. The reason given for the dismissal of the application was that the management has disputed the entitlement of the petitioner/workman with regard to the claim. It was also observed by the learned Labour Court that there is no prior adjudication with regard to these disputed claims and, therefore, the application was dismissed.

3. The petitioner has filed the present writ petition against the impugned order after expiry of three years and has given an explanation in his additional affidavit dated 18th March, 2009 stating that in the month of February, 2005 he had met with an accident while he was driving a bike. Then in April 2005, his wife got a paralytic attack because of which she was confined to bed which ultimately culminated into her unfortunate demise on 14th July, 2005. This was followed by

yet another accident of the petitioner in September, 2005 because of which the petitioner is alleged to have been confined to bed for a period of six months due to medical problem. It is averred that injuries, which the petitioner suffered had impaired his mental faculty because of which there was a selective loss of his memory. It was stated by the learned Counsel for the petitioner that even when the petitioner had come to him, he had to remind a particular thing to the petitioner as many as 6-7 times before it could get registered with him. The photocopies of the death certificate and the other medical record has been placed on record.

4. I have heard learned Counsel for the petitioner.

5. So far as the reason for inordinate delay in filing the writ petition is concerned, all these incidents are pertaining to the time, prior hardly to the pronouncement of the impugned award and, therefore, they are not of any relevance for explaining the delay in filing the writ or the condonation thereof.

6. The learned Counsel has urged that for preferring a writ petition there is no definite period of limitation which is prescribed by law and, therefore the present writ petition may be entertained.

7. I fully agree with the submission of the learned Counsel for the petitioner that the Apex Court has repeatedly held that there is no fixed period of limitation prescribed for filing the writ petition. In a given case a period of three months may be fatal as while in another case even if a writ filed after a year and a half may be entertained. But the Apex Court has held on an average the period of limitation for filing the writ petition ought to be a year in cases other than the ones for which the period of limitation is prescribed under the Limitation Act itself which will be the guiding factor. Reliance in this regard can be placed on State of Madhya Pradesh Vs. Bhailal Bhai and Others, , where the Supreme Court had observed as under:

the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the Legislature as the time within which the relief by a suit in the Civil Court must be brought may ordinarily be taken to be a reasonable standard by which the delay is seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a Civil action for the remedy but where the delay is more than the period it will almost always be proper for the Court to hold that it is unreasonable.

8. In the instant case, admittedly, the writ petition has been filed after expiry of three years and the learned Counsel for the petitioner has tried to take the advantage of the selective amnesia allegedly being suffered by the petitioner. The law regarding condonation of delay or the non-starting of period of limitation in cases of a person suffering from disability is also governed by Sections 6 to 9 of the Limitation Act which specifies that once the period of limitation starts running, any subsequent disability suffered by the party cannot stop the said

period of limitation.

9. There is no averment to the effect that on the date when the award was passed, the petitioner was suffering from any specific disability and, therefore, once the period of cause of action to come to Court is to be reckoned from 17th March, 2006, the subsequent selective amnesia allegedly being suffered by the petitioner is of no consequence.

10. In the light of the aforesaid reasons, I am of the opinion that the writ petition is inordinately delayed and suffers from latches. Even if the question of latches and delay is ignored, even on merits there is no infirmity in the award passed by the learned Labour Court.

11. In *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, the Hon''ble Supreme Court has laid down that proceedings u/s 33-C(2) of the Industrial Dispute Act, 1947 are in the nature of execution proceedings where the only job which the learned Labour Court has to do is the job of calculation and the grant of benefits of prior adjudication or of recognition of rights between the parties.

12. In the instant case, the petitioner is claiming benefits on the basis of his services with the respondent/management and the other reliefs which the respondent/management has denied. That being the position, the learned Labour Court was right in holding that as the petitioner is disputing the claims, his remedy was not in filing application u/s 33-C(2) of the Industrial Disputes Act, 1947.

13. I do not find any infirmity and illegality or perversity in the order passed by the learned Labour Court on merits and even otherwise the present petition is inordinately delayed and, therefore, is hit by latches.

14. Accordingly, the same is dismissed.

No order as to costs.