

(1960) 06 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 1538 of 1959

Sitaram Mulchand Transport Company

APPELLANT

Vs

Bashir Ahmed Shatto

RESPONDENT

Date of Decision : 15-06-1960

Acts Referred:

Income Tax Act, 1922 — Section 33A(2)
Payment of Wages (Procedure) Rules, 1937 — Rule 8
Registration Act, 1877 — Section 77
Registration Act, 1908 — Section 73(1), 77(1)
Survey and Boundaries Act, 1897 — Section 13, 24

Citation : (1960) 1 FLR 588

Hon'ble Judges : H.K. Chainani, C.J.;V.M. Tarkunde, J

Bench : Division Bench

Judgement

Chainani, C.J.—The facts giving rise to this application are that opponent 1 (hereinafter referred to as the opponent) was formerly in the service of the petitioners. The petitioners are a transport company, of which Sitaram Mulchand is the owner. In 1958 the opponent made an application under the Payment Wages Act to the authority constituted under that Act, for recovering from the petitioners about Rs. 1,325, which according to him was due to him from the petitioners, on account of his wages, which had not been paid. The petitioners disputed the claim of the opponent and alleged that only Rs. 16.44 were due to the opponent. The application made by the opponent came up for hearing on 6 May 1959. On that date the petitioners were absent. The opponent was examined and thereafter the matter was adjourned for passing an order on the application. The date on which the order was to be made was not announced, nor was it intimated to the parties. According to the petitioners they were absent on 6 May as Sitaram was suffering from high fever and kidney trouble. He went to the office of the authority a week later and was told that an intimation of the order would be sent to him. The order was made on 22 May 1959. This order directed the petitioners to pay Rs. 1,323.25 to the opponent. This order was not communicated to the parties. The petitioners' case is that they learnt about this

order on 30 July 1959, when they were asked to pay the amount by the Collector. On 17 August 1959, the petitioners made an application to the authority to set aside the ex parte order made on 22 May 1959 and to condone the delay, if any, in presenting the petition. Rule 8 of the Payment of Wages (Procedure) Rules, 1957, provides that an ex parte order made in the absence of the employer may be set aside and the application re-heard on good cause being shown within one month of "the date of the said order." The application for setting aside the order of the authority had been made more than one month after 22 May 1959 on which date the order had been made. The authority took the view that it had no power to condone the delay in making the application. The authority, therefore, dismissed the application made by the petitioners for setting aside the ex parte order. Against that order the present special civil application has been filed.

2. The question for consideration is : What is the meaning to be attached to the words "the date of the said order" used in rule 8 ? It has been held in several cases that where an order is made without previous intimation to the parties and in their absence, the order can only be said to have been made, when it is communicated to the parties or when they acquire actual or constructive knowledge of the order. It is not necessary to mention all the decisions, but I will refer to some of them. In *Abdul Ali v. Mirja Khan* I.L.R 1903 . 28 Bom. 8, 5 Bom. L.R. 622 it was held that the expression "making of the order" in S. 77 of the Indian Registration Act, 1877, means not merely recording the order in writing, but communicating it to the party concerned so as to bind him by it. At p. 10 it was observed that an order does not become an order unless and until steps are taken" by the officer passing it to bring it to the consciousness and knowledge of the party against whom it is passed. Similar view was taken in *Petlad Bulakhidas Mills Co. Ltd. Vs. Raj Singl. and Another*, . That was a case under the Income Tax Act and it was held that the word "order" used in the expression "from the date of the order" in S. 33A (2) of the Incometax Act, 1922, means the order of which the party affected has actual or constructive notice. *Annamalai v. Cloete* ILR 1883 Mad. 189 was a case under S. 25 of the Madras Boundary Act, 1860. This section limited the time within which a suit could be brought to set aside the decision of a Settlement Officer to two months from the date of the award. It was held that time did not begin to run until the date on which the decision was communicated to the parties. In the course of the judgment it was observed that the decision in the sense of the Act could not date earlier than the date of the communication to the parties, for otherwise they might be barred of their right of appeal without any knowledge of the decision having been passed. The same view was taken in *Secretary of State for India in Council v. Gopiseti Narayanaswami Naidu* 1910 ILR Mad. 151. Under S. 24 of the Survey and Boundaries Act, 1897, the starting point of limitation for an appeal by way of a suit against a final decision under S. 24 of the Act is the date of decision under S. 13. It was held that the date of decision is the date when the decision to passed and the decision cannot be said to be passed until it is in some way pronounced

or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing what it contains and that till then, though it may be written, signed and dated, it is only the decision which the officer intends to pass. If the officer gives the parties sufficient notice of the day on which he will pass his decision, to enable them, if they choose, to be present and hear it, limitation will run from that day if the decision is announced on that day. That is the date of communication, though the parties may not care to listen. These cases were followed in *Sawminathan v. Letchmanan* I.L.R.1929 Mad. 491 in which it was held that an order under S. 73(1) or S. 77(1) of the Registration Act, 1908, cannot be deemed to have been made unless passed in the presence of the parties, or after notice to them, or until it has been communicated to them.

3. Mr. Singhvi, who appears on behalf of the opponent, has relied on the decision of *Tendolkar and Shelat, JJ.*, in *Gurdiyal Singh Vazir Singh v. C. P. Fernandez* [(1957) Special Civil Application No. 2988 of 1956, decided by *Tendolkar and Shelat, JJ.*, on 3 July 1957 (unrep.)] in which a contrary view was taken and in which it was held that even when an order is made in the absence of parties and without previous notice to them, limitation under rule 8 of the Payment of Wages (Procedure) Rules would run from the date of the order. The learned Judges recognized the hardship, which would be caused by taking this view, but they felt that this was a matter for the rule-making authority to consider. We find from the judgment that the attention of the learned Judges was not invited to the cases, some of which I have referred to above, in which it has been held that where an order is made in the absence of parties and without previous intimation to them, the date of the order is the date on which they receive intimation or knowledge of the order. We have no doubt that if these cases had been brought to the notice of the learned Judges, they would have taken a different view.

4. In our opinion, therefore, the date of the order, within the meaning of rule 8 of the Payment of Wages (Procedure) Rules, is the date on which the order is actually made, if it is made in the presence of the parties or after previous notice to them of the date on which the order will be made, or if it is made in the absence of parties and without previous intimation to them, the date on which it is communicated to them or on which they acquire actual or constructive knowledge of the order.

5. In the present case the proceedings were adjourned on 6 May 1959 after the evidence of the opponent was recorded, without informing the parties of the date on which the order was to be made. On 22 May 1959, when the order was made, the parties were not present. They had also not been previously informed that the order would be made on this date. The order was also not communicated to the parties. The petitioners' case is that they learnt about the order on 30 July 1959. If that be so, limitation would run from that date and the application made by them on 17 August 1959 for the order being set aside would be in time.

6. We, therefore, set aside the order made by the Payment of Wages Authority on 21 November 1959 dismissing the application made by the petitioners for

setting aside the ex parte order made on 22 May 1959, and remand the matter to the authority for deciding in the light of the principles stated above, whether the application made by the petitioners on 17 August 1959 was in time and if so, whether the petitioners have shown sufficient cause for the ex parte order being set aside and the original application being heard on merits. No order as to costs.