

(2011) 04 KAR CK 0015
In the Karnataka High Court
Case No : Writ Appeal No. 4784 of 2010

Smt Rosamma Joseph

APPELLANT

Vs

Shri Ashok Nichani Proprietor, Ashnik Cables

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (2011) 3 KCCR 349 SN : (2011) 3 KCCR 348

Hon'ble Judges : V.G. Sabhahit, J;B. Manohar, J

Bench : Division Bench

Advocate : V.S. Naik, for the Appellant;

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This writ appeal is filed by the Appellant being aggrieved by the order dated 17.2.2009 passed in W.P. No. 16842/2008 and the order dated 3.9.2010 passed in R.P. No. 179/2010.

2.W.P. No. 16842/2008 was filed by the Respondent herein-employer being aggrieved by the judgment and award passed by the II Addl. Labour Court, Bangalore in Reference No. 60/2005 dated 25.7.2008. Appellant herein had raised the said dispute before the Labour Court in view of the order of retrenchment against her-workmen due to lock out for non-complying the provisions of The Industrial Disputes Act, 1947, The Labour Court passed the judgment and award in Reference No. 60/2005 and the II party management was directed to pay a sum of Rs. 1,26,393.50 paise to the workmen with interest at the rate of 9% p.a. from the date of the petition till the date of actual payment Being aggrieved by the said order and award dated 25.7.2008 holding that there was no noncompliance of provisions of Section 25 of the Industrial Disputes Act, 1947, W.P. No. 16842/08 was filed by the employer-Respondent herein and when the matter came up before the Court on 17.2.2009, in lieu of the submissions made by the counsel appearing for the parties that the parties have agreed to settle the matter and it was submitted that though the workmen has raised loan

to the tune of Rs. 35,000/-, the parties have agreed to settle the dispute and the workmen had agreed to receive Rs. 60,000/- by way of full and final settlement of all the claims against the management and the management was directed to pay Rs. 60,000/- in two months from the date of receipt of copy of the order and accordingly, writ petition was disposed off recording the submissions. Being aggrieved by the said order passed by the learned Single Judge, W.A. No. 834/2009 was filed by the Appellant herein and the said Writ appeal was withdrawn with liberty to file review petition before the learned Single Judge and accordingly the same was disposed of on 19.1.2010. Thereafter, Review petition No. 179/2010 was filed by the Appellant herein before the learned Single Judge contending that no memo had been filed and the workman had not agreed to receive Rs. 60,000/- by way of full and final settlement and that she had not authorised her counsel to enter into the compromise and therefore the learned Single Judge was not justified in recording the settlement and passing the order. Said Review petition was dismissed by the order dated 3.9.2010, by holding that the Court has not passed order on merit, but has only recorded the submissions made by both the counsel and it is based on their amicable settlement, the order has been passed and there is no error apparent on the face of the record and the order has been passed with the consent of the parties and no review arises against the consent order. Being aggrieved by the said orders of the learned Single Judge passed in Writ appeal and the review petition, this appeal is filed by the workman. There is a delay of 631 days in filing the appeal.

We have heard the learned Counsel appearing for the workmen.

3. Learned Counsel appearing for the Appellant-workmen submitted that the delay in filing the appeal is due to the fact that earlier W.A. No. 834/2009 was filed by the Appellant before this Court on 19.1.2010 and the same was disposed of with liberty to file the review petition and review petition was filed and the same was disposed of by order dated 3.9.2010 and thereafter the present appeal is filed. Learned Counsel further submitted that the Labour Court had ordered payment of Rs. 1,26,393.50 ps to the workmen with interest at 9% p.a. from the date of the petition till the date of actual payment, but, the workmen had received only Rs. 60,000/- by way of full and final settlement towards her claim, in modification of the order passed by the Labour Court and that she has not authorised her counsel to make said submission before this Court agreeing for settlement in W.P. No. 16842/2008 and the same counsel who appeared in the writ petition filed review petition. In the review petition filed, though the workmen contended that she had not instructed her Advocate agreeing for settlement, the prayer of the Appellant was rejected by the learned Single Judge holding that it is a consent order.

4. Learned Counsel further submits that the workmen was not present before the Court and she had not authorised her counsel and that she had not signed and therefore her fundamental rights would be affected as it is a consent order and therefore the order passed by the learned Single Judge in writ petition and

review petition are liable to be set-aside,

5. We have given careful consideration to the contention of the learned Counsel appearing for the Appellant and scrutinized the material on record.

6. The material on record clearly goes to show that the final order passed by the learned Single Judge in W.P. No. 16842/08 reads as follows:

After hearing for some time, considering the fact that the industry is closed and also the other industry being not a sister concern and it is different entity, a suggestion is made for amicable settlement by granting some compensation to the Respondent- workman.

Though the learned Counsel for the management submitted that, workman had availed loan of Rs. 35,000/-, however, parties have agreed to settle the dispute, Workman has agreed to accept Rs. 60,000/- by way of full and FINAL SETTLEMENT OF ALL THE CLAIMS AGAINST management. The management has agreed to pay Rs. 60,000/- in two months from the date of receipt of copy of this order.

7. It is clear from the above said order passed by the learned Single Judge that the said order has been passed on the basis of the submission made by the learned Counsel for the parties i.e., learned Counsel appearing for the employer and learned Counsel appearing for the Respondent and thereafter review petition was filed averring that no such submission was made and no memo of settlement was filed before the Court and therefore no settlement or compromise could have been recorded by the Court. The same was rejected by the learned Single Judge holding that the order passed is by consent of the learned Counsel appearing for the parties.

8. It is well settled that parties should not suffer for the conduct of the Advocates. It is also equally well settled that Advocates should not suffer for the conduct of the parties and on the basis of the submission made by learned Counsel appearing for the Appellant herein, the consent order was passed by the learned Single Judge. It is well settled that when a party executes vakalath in favour of an Advocate said Vakalath will also authorise the Advocate to enter into settlement on behalf of his party and in the review petition, the learned Single Judge has reiterated that the order was passed in lieu of the submission made by the counsel appearing for the parties and it was a consent order and has rejected the submission that no memo was filed and party has not authorised her Advocate and other allegations made in the review petition, therefore, it is clear that if the submission of the learned Counsel appearing for the Appellant is accepted, the same may amount constituting mis-conduct on the part of the Advocate holding that he has made submission to the Court which was not authorised by his party and has acted pre-judicially to the interest of the party and therefore having regard to the above said material on record and the affidavit to the Court, we hold that there is no merit in the contention of the learned Counsel Appearing for the Appellant that the consent order passed by

the learned Single Judge could not have been passed and the impugned orders are erroneous and are liable to be set-aside. We hold that appeal is devoid of merit and does not call for interference. The orders passed by the learned Single Judge in Writ petition and review petition are affirmed. Appeal is dismissed as devoid of merit.

Since appeal is devoid of merit, it is unnecessary to enter into the question of delay in filing the appeal Accordingly, Misc.W.12196/10 is dismissed.