

(2004) 08 BOM CK 0031

In the Bombay High Court

Case No : O.O.C.J.W.P. No. 2111 of 2004

Yeshwant Mahadeo Chavan

APPELLANT

Vs

Kohinoor Mills No. 1

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 84

Citation : (2005) 1 LLJ 339

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : S.N. Deshpande, for the Appellant; Nandini Menon, for the Respondent

Final Decision : Allowed

Judgement

F.I. Rebello, J.—Rule. Heard forthwith. Petitioner had preferred an appeal against the order dated April 26, 2001 passed by the Labour Court before the Industrial Court. That Appeal was filed on or about August 22, 2003. The petitioner had also filed an application for condonation of delay in filing the appeal. By an order dated April 7, 2004, the Industrial Court was pleased to dismiss the application for condonation of delay, and consequently the appeal stood dismissed. It is this order which is the subject matter of the present petition.

2. It is the case of the petitioner that the learned Industrial Court in a matter of condonation of delay, did not apply the correct test laid down by the Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, : It is therefore submitted that non-application of correct test in the matter of condonation of delay amounts to failure on the part of the Industrial Court to exercise the jurisdiction and consequently, the order of Industrial Court should be set aside and the delay in filing the appeal should be condoned and the petitioner should be allowed to prosecute the appeal. It is further submitted that the very fact that the petitioner had taken steps to serve the approach notice and thereafter filed an application before the Industrial Court would indicate the

desire on the part of the petitioner to proceed with the proceedings. He therefore submits that in the instant case, because of failure by the Union to prefer the appeal, the petitioner should not be made to suffer the consequences.

3. On the other hand, on behalf of the Respondent, learned counsel contends that the Tribunal has exercised its discretion based on the material available and in those circumstances, this Court should not interfere with the impugned order.

4. Normally in the matter of exercise of discretion by the Courts below, this Court in the exercise of extra-ordinary jurisdiction would not interfere provided the correct tests are applied by the Court below. In the instant case, no doubt there is some delay over two years on the part of the petitioner to file an appeal. The question however was whether the explanation given by the petitioner was plausible or not. The case of the petitioner was that the union had informed him that the appeal would be preferred and it would take about 2 to 3 years for its disposal and the petitioner need not come to find out about the appeal and he would be duly communicated the results thereafter. It is now well settled that the litigant cannot be saddled with the costs and consequences of non-action by the lawyer and in the instant case by the union which was representing the workmen considering the general strike and large scale dismissal of workmen. The Industrial Court ought to have addressed this question to itself and further ought to have considered the fact that the petitioner had duly prosecuted the proceedings before the Labour Court. The law of limitation is not to deprive the litigant of his vested right. The Industrial Court has to examine the matter in the context of the facts of the case. In the instant case, in my opinion, the mere citing of judgment is not an answer. The explanation given by the petitioner was a plausible answer and it cannot be said that the approach of the petitioner was so callous. Ultimately the petitioner was workman working in Mill, who had suffered the trauma of dismissal. In the light of that, the impugned order is set aside. Application is allowed. In other words, delay in filing the appeal is condoned. The learned Industrial Court is directed to dispose of the appeal according to law. Petition stands disposed of in terms of the above. No order as to costs.

5. Parties to act on an ordinary copy of this order duly authenticated by the personal secretary or the Associate.