

BEFORE B. Y. PHAD, JUDGE,
FOURTH LABOUR COURT, THANE
MISC. APPLICATION (REST.) (IDA)NO. 01/2018
CNR NO. MHLC04-000007-2018
IN
REFERENCE (IDA) NO. 07/2014

- 1) M/s. Sagar Shekhar Textiles & Ors.
- 2) Laxmi Reddy,
- 3) Mahadevi Reddy Umthal
- 4) V.L. Reddy
H.No. 1359, Varaldevi,
New Kaneri, Bhiwandi,
Dist. Thane. ...Original First Party
- 5) Mr. Laxma Reddy Madhav-
Reddy Vumenthala
Having Address at:- House No. 1471/4,
Shramik Nagar,
Near Ramkrishna Packing Press,
Varaldevi Road, Bhiwandi,
Dist. Thane. ...Applicant

Versus

- 1) Shri. Santoshkumar Ramvilas Jaiswal
C/o. Uttar Bhartiya Kamgar Sangh (Union)
Opp: Nordan Petrol Pump,
Above Milap Motor Training School
Agra Road, Narpoli, Bhiwandi,
Dist. Thane. ...Opponent
(Original Second Party)
- 2) The District Collector
Office of the District Collector
Opp. Thane District Sessions' Court,
Court Naka, Thane (West),
Taluka & Dist. Thane.

- 3) The Tahsildar
Office of the Tahsildar, Bhiwandi,
Taluka Bhiwandi, Dist. Thane. ...Opponents

Appearance:

Adv. Shri. L.P. Vishe for original first party.
U.R. Shri. P.N. Singh for original second party.

ORDER BELOW EXH.C-2
(Dated: 27-03-2018)

The instant application has been moved by the applicant to stay execution, operation and implementation of the ex-parte order dated 26-9-2016 in Reference (IDA)No. 07/2014. According to applicant, he has preferred the application for setting aside ex-parte award. The application has been moved by the applicant under Rule 26(2) of the Industrial Disputes (Maharashtra) Rules 1957. The ex-parte award is dated 26-9-2016. The copy of the same is received by the applicant on 22-12-2017. The applicant was not served with the notice of the proceeding, therefore, he could not appear in the matter. He did not receive any demand letter dated 30-10-2012 from the second party. The applicant did not receive any notice from the authorities in regard to the Reference (IDA) of the dispute in question. Therefore, the execution, operation and implementation of the ex-parte award may be stayed.

- 2) This application has been objected on behalf of the opponent-workman at Exh.U-4 that the application is not maintainable. The same is barred by limitation. The same is not

filed in a prescribed time under Rule 26 of the Industrial Disputes (Bombay) Rules. The award was passed by this court on 26-9-2016 and it was sent to both the parties on 13-1-2017 and thereafter the expiry of one month, it has become final. The workman had also issued a copy of award through RPAD dated 20-2-2017 to the applicant. Therefore, the application is not maintainable. The same may be rejected.

3) Ld. Advocate for the applicant submitted that the second party workman has misled the court and authorities and obtained ex-parte award. The correct name of the applicant is not mentioned in the reference proceeding. Despite of that the revenue authorities are pressurising the opponent to issue notice to the applicant for recovery of dues. Therefore, it becomes necessary to stay the execution and implementation of the ex-parte award. The application filed by the applicant is perfectly maintainable under Rule 26 of the Industrial Disputes (Maharashtra) Rules, 1957. Therefore, the application may be allowed.

4) Ld. Advocate for the applicant has relied on the following rulings:-

- 1) **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal**, 1980 DGLS (SC) 501
- 2) **Anil Sood Vs. Presiding Officer, Labour Court**, 2000 DGLS (SC) 1703 SC
- 3) **Satnam Verma Vs. Union of India**, 1984 DGLS (SC) 294 SC

- 4) **State of Rajasthan & Arn. Vs. Panna Ram & Anr.**, 2004 (4) LLN 308 Raj.HC
- 5) **Shri. Aminkha Vs. Industrial Court, Maharashtra**, 2007 LAB. IC 4439 Bom. HC
- 6) **Tukaram R. Rasal Vs. Krishna Sahakari Sakhar Karkhana Ltd. & Anr.**, 2000 III CLR 904 Bom.HC
- 7) **Hindustan Motors Mfg. Co. Vs. Sadashiv Tuklaram Salunkhe & Ors.**, 2009 (2) Bom.C.R. 526 Bom.HC
- 8) **Nara Goud Vs. Industrial Tribunal-cum-Labour Court, Warangal & Anr.**, 1996 DGLS (A.P.) 172 APHC

5) On the other hand, Ld. Advocate Shri. Arif for opponent-second party submitted that the application itself is not maintainable. The court has become functus officio after expiry of 30 days from the date of publication of the award, therefore, this court has no jurisdiction to try and entertain the present application for the stay to the execution of the award. Therefore, the application may be rejected.

6) Having considered the submissions from both the sides and considering the case of the applicant that he has received the certified copies of the award dated 26-9-2016 on 22-12-2017 and that the present application is filed on 6-1-2018 and that Rule 26(2) of the Industrial Disputes (Maharashtra) Rules, 1957 provides for filing an application for setting aside ex-parte award within 30 days of the receipt of the copy thereof, I am of opinion that prima facie it cannot be said that the application is not maintainable. The issue of maintainability of the application will be decided in its own merits alongwith other is-

sues at the time of final hearing of the matter. Therefore, under the circumstances till then, I am of opinion that it will be proper to stay execution and implementation of the ex-parte award but on the cost. Hence, the following order.

ORDER

The execution, operation and implementation of the ex-parte award in Reference (IDA)No. 7/2014 dated 26-9-2016 is hereby stayed until disposal of this application on payment of cost of Rs. 10,000/- by the applicant to the opponent.

Sd/-
(B. Y. Phad)
Judge

Dated: 27-03-2018.

Fourth Labour Court, Thane.

Argued on: 13-03-2018.

Award dictated on: 27-03-2018.

Award transcribed on: 29-03-2018.

Award checked & signed on: 31-03-2018