

Id. No. 205/2019

17th Feb., 2023

Sh. Prabhakar Pokhariyal

Versus

M/s MMTC And Others.

ORDER

This order deals with the application filed by the Respondent no 5 of the proceeding praying for setting aside the order dated 27/04/2022 by which all the respondents including the applicant were proceeded ex-parte and the ex parte award dated 18/11/2022 was passed, by which the Respondent no 5 has been directed to pay the amount to the claimant as computed in the award. The notice for hearing of the petition was served on the claimant, who appeared alongwith his AR and participated in the hearing.

The learned AR for R 5, while pointing to the daily order sheets of this proceeding submitted that the Respondent no 5 who is the present applicant, on receipt of the notice issued by the Tribunal had appeared on 21/10/2019 and filed an application for rejection of the claim for the grounds taken in the petition. The matter was adjourned to 11/12/2019 for hearing of the said petition and for filing of WS by R1,2,3 &4. On the said date, the claimant filed reply to the application of R 5 and the proceeding was adjourned to 05/02/2019 for hearing of the application filed by R 5. But on 05/02/2019 the matter was not heard as the PO was on leave. However the Respondent No 5 filed his WS on that day though his application challenging maintainability was pending. There after the matter was adjourned from time to time on account of the Covid 19 Lockdown and advisory of the Govt. in that regard. On 5/1/2022, the matter was taken up through VC. It seems neither party had notice of the same as none appeared on that date. On the very next date i.e on 23rd March 2022, the matter was taken up for physical hearing when the claimant alone was present and none of the Respondents were present, as no notice after resumption of normal court work was served, intimating the next date of hearing. On that day the petition of R5, in which maintainability was challenged stood rejected as not pressed and matter was adjourned to 27/04/2022 for WS to be filed

by all the Respondents. The Tribunal at that point of time did not take in to Record the WS of R 5 filed on 05.02.2020. The said WS was filed before the proceedings were suspended for the outbreak of Covid 19. Surprisingly, the Tribunal, on 27/04/2022 proceeded ex parte against all the Respondents including R 5 for not filing of WS, though his WS was already there in the Record and consequentially, the ex parte Award was passed. He there by submitted that the Respondent No 5 has been prejudiced for the ex parte award passed and the same be set aside and opportunity be granted to the Respondent to contest.

The learned AR for the claimant workman argued that it is an old proceeding of the year 2019 and the workman, who has lost the job is suffering miserably. When the workman could know about the dates of adjournment from the cause list of the Tribunal notified in the website, it is beyond belief that the Respondent could not know the same. He thereby argued for rejection of the petition to set aside the ex parte Award.

On hearing the argument advanced and on perusal of the chronologically maintained order sheets it is noticed that the present applicant as R5 had filed his WS on 05/02/2020 which is on record but was not considered when the said R 5 was proceeded ex parte on 27/04/2022 on the ground of non filing of WS. It is also noticeable that no notice was issued to the parties, after the Tribunal resumed physical hearing. Hence it is concluded that the order by which the R 5 was proceeded ex parte was passed behind his back and in ignorance of the fact that his WS was there on record. The R5 has sufficiently explained his absence which was not deliberate or for lack of diligence. The circumstances justify setting aside of the ex parte order and ex parte award against the R5 only. It is made clear that no prayer has been made for recalling of the order dated 23/03/2022. Hence the hearing will resume from the stage of filing of rejoinder by the claimant to the WS of R5. The ex parte award is hereby set aside.

For the old nature of the proceeding and the circumstances under which the ex parte award has been set aside, it is directed that the proceeding shall be taken up on day today basis to save time. Call on for filing of rejoinder by the claimant to the WS of R 5 and framing of issue. The claimant is directed to serve advance copy of the rejoinder on R 5 ahead of the date fixed ie. 2nd March, 2022.

Presiding Officer
CGIT-II