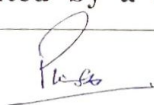


ORDER SHEET
CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR(MP)

CASE NO. CGIT/LC/R/32/2021
Shri Sudheer Paltanwale Vs. I.D.B.I. Bank

Date of order of proceeding	Order or proceeding with signature of Presiding Officer	Signature of parties or pleaders where necessary
11-11-2022	<p>Shri Shastra Budhey , Union Representative present for workman.</p> <p>Shri Abhinav S.Kherdikar, Advocate for the management.</p> <p>Union Representative pressed his application dated 26-8-2022 filed under Section 36(4) of the Industrial Disputes Act,1947, herein after referred to as the word 'Act" seeking direction to management not to let any legal practitioner on its behalf because the workman has not engaged any legal practitioner.</p> <p>The management has preferred a written reply dated 20-9-2022 with an affidavit.</p> <p>Heard both the sides on this application and the reply and also perused the record.</p> <p>Section 36(4) of the Act is being reproduced which is as follows:-</p> <p>36(1).....</p> <p>36(2).....</p> <p>36(3).....</p> <p>36(4) In any proceeding before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the</p>	



consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

The learned counsel for the Management has relied on decision of Hon'ble High court of Bombay in case of T.K.Vargese Vs. M./s Nichimen corporation Corporation (2001) 3 MHLJ 711. The relevant paragraph No.5 specifically referred to by learned counsel is being reproduced as follows:-

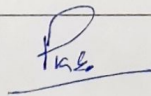
IN the facts and circumstances of this case it is not necessary for me to refer to the various authorities cited by both the learned Advocates. It has been held by several judgments of this Court that if there was no objection raised on the first date of the proceedings to the appearance of a legal practitioner on behalf of the other side the consent is to be taken as implied consent. Since the Labour Court has also allowed Shri Shetty the legal practitioner to appear on behalf of the Respondent company it will have to be deemed that the Labour court had granted leave to Shri Shetty to appear for the Respondent Company. Though there was no specific or express consent given by the petitioner workman or his representative Shri Gole and though the Labour court had not specifically granted leave to Shri Shetty to appear for the Respondent company. From the conduct of Shri Gole as well as from the fact that Shri Shetty was allowed to appear in the matter before the Labour Court, leave will have to be inferred having been granted. Shri Shetty filed his own affidavit as an advocate and has set out verbatim the developments which took place before the Labour court. The facts which have been set out by Shri Shetty have not been disputed by the petitioner workman. I find from the record that till 16-6-2000, Shri Gole, the representative of the petitioner workman, did not raise objection to the appearance of Shri Shetty, as the



advocate for the Respondent Company. Shri Gole with his large experience of 40/50 years in the field cannot be said to have lost sight of such an important objection being raised in such matters. It also can be inferred that Shri Gole in his fair sense waived the objection raised in the statement of claim considering the fact that the Respondent Company were a foreign company and that all the Executive and Management were not at all conversant with the Labour Laws of India. IN this back ground we have to consider the factual position which was before the Labour Court. Further, Shri Gole being a very senior Trade Union leader did not feel any challenge from Shri Shetty, comparatively junior legal practitioner at the Bar.

It appears form perusal of record in the case in hand that the case was first registered on 8-6-2021 and notice were sent to the parties. The Union Representative Mr. Shashtra Budhe appeared on the date fixed i.e. 13-10-2021 and filed statement of claim with photocopy of documents. None was present for Management on that date, hence date 30-12-2021 was fixed for next hearing and on that date also none was present for Management. A fresh speed post notice to management was ordered as it appears from perusal of order sheet of that date, Union representative was present and filed resolution of the Union(copy) dated 25-3-2022. The management filed vakalatnama of its learned counsel Mr. Abhinav Kherdikar who was served copy of statement of claim along with photocopy documents filed by workman representative and date 7-6-2021 was fixed for next hearing.


It comes out that the Presiding Officer was on leave on 27-6-2022, hence dated 26-8-2022 was filed for next



hearing. Thus on that date i.e. on 26-8-2022, the application under Section 36(4) was filed, hence it is clear that it was not filed on the first date fixed for hearing which was the date 13-10-2021 on which the workman side filed this statement of claim of claim and documents , rather it was filed on 26-8-2022 i.e. on the date which the Management filed its written statement of defence before this Tribunal. The facts of the recorded case are similar to the case in hand. IN the referred case, the order of the Tribunal refusing to grant prayer under Section 36(4) of the Act was approved as it was not filed on the very first date of hearing when the workman side put in its appearance and filed its statement of claim. Hence in the light of this discussion, this application also deserves to be rejected and is rejected accordingly.

Needless to say that the State Legal Services Authority has a panel of advocates and provides service of Advocates from the panel to the deserving and poor litigants before this Tribunal in their cases. Right to free legal aid is at present a Constitutional right of a party in Article 39A of Indian Constitution.

List the case on 19/1/23 for admission/denial of documents.


PRESIDING OFFICER