SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Khub Ram Vs. Tulsi Devi and ors.

Khub Ram Vs. Tulsi Devi and ors.

SooperKanoon Citation : sooperkanoon.com/705598

Court : Delhi

Decided On : Nov-05-2003

Reported in : 2004(72)DRJ67; (2004)137PLR19

Judge : Mukul Mudgal, J.

Acts : Code of Civil Procedure (CPC) - Order 9, Rule 13; Workmen's Compensation Act

Appeal No. : CWP No. 7035/2001

Appellant : Khub Ram

Respondent : Tulsi Devi and ors.

Advocate for Def. : V.K. Tandon, Adv.

Advocate for Pet/Ap. : J.S. Vohra, Adv

Judgement :

Mukul Mudgal, J.

CM 7714/2003

The application is allowed. The delay in filing the application for restoration of the writ petition is condoned.

The application stands disposed of.

CM 7713/2003

Mr. Tandon who appears for the respondent does not object to the restoration of the writ petition. Accordingly the application is allowed. The writ petition is restored to its original position.

The application stands disposed of.

CW 7035/2001

1. This writ petition challenges the award rendered by the Commissioner, Workmen's Compensation, who on finding that the deceased Mr. Mohinder Singh Negi was killed during the course of his employment granted compensation by his award and held the petitioner liable to pay compensation of Rs. 2,05,950/-. This award is challenged in this writ petition on the ground that the proceedings proceeded ex-parte and the petitioner was never served. In fact, this is a ground on which learned Single Judge issued notice on 19th December, 2001. The relevant portion of the award which deals with the service on the petitioner reads as follows:-

'Notice for 2012000 was sent through registered A.D. To the respondent to reply the statement of claim filed by dependents but the same was received back in the office with the remarks 'Inspite of repeated visits, the receiver is not available' by the postal authorities. The same notice was also sent through the Labour Inspector and Labour Inspector of the Labour Department, Govt. of Delhi, has reacted that inspire of repeated visits Shri Khub Ram did not meet him at his office and Shri Naresh Kumar, Munshi of the Company refused to receive the summon thereforee, the same was pasted at the office gate.

Another notice for 232000 was issued through the SHO, Punjabi Bagh Police Station and the police authorities has reported that 'summon was received by Shri Anup Kumar, employee of the Company and Khub Ram has also been informed by them telephonically about the summon.'

Inspite of these notices the respondent preferred not to put his appearance to contest the claim and it was decided to proceed ex-parteagainst the respondent.'

2. The petitioner has sought to challenge these findings and in the writ petition the only averment is about the report of the Police Station, Punjabi Bagh in paragraph 8 and there is no averment about the finding about the service through Labour Department in the impugned order. However, the learned counsel for the petitioner submitted that this service through Labour Department was challenged by way of an application under Order 9 Rule 13 C.P.C. filed before the Commissioner, Workmen's Compensation on 9th May, 2001 which has hot been disposed of by the Commissioner, Workmen's Compensation because of the pendency of the writ petition in this Court. In the interest of justice and considering the fact that the respondents who are the legal heirs of the deceased are without any succour or sustenance since 1988, I am considering the averments in the said application filed by the petitioner, in this Court so as to avoid the further delay.

3. The averments regarding the Police Station, Punjabi Bagh in paragraph 8 of the writ petition read as follows:-

'8. That the petitioner came to know that he had been proceeded ex-parte only on the report of the police of P.S. Punjabi Bagh that they had served the notice on some Anoop Kumar, an employee of the petitioner. Although there is no such employee with the petitioner as per his knowledge. The petitioner has not been informed by any police petition with respondent No. 6. Thus the service of the alleged notice for proceeding ex-parte also seems to have been fraudulently manipulated.'

4. In the application under Order 9 Rule 13 handed over in this Court, the averment regarding the service are contained in paragraphs 3 and 4 which read as under:-

'3. That the respondent has not been properly served of notice sent through registered A.D. or through the labour inspector who also reported that Shri Khulbram Prop. M/s Khubram Oil Co. did not meet him at the office and it is wrong to allege that any notice was pasted at the office premises situated in LIG Flats.

thereforee, the respondent has no knowledge of any claim under Workmen's Compensation Act pending before the Hon'ble Court. 4. That it is wrong to allege by the Police officials of PS Punjabi Bagh that they had issued notice for 232000 to one Shri Anoop Kumar employ of the company and Shri Khubram had also been informed on telephone about the summons. The fact is that the respondent most of the times remains out of station for business purposes, thereforee, the question of informing the respondent through telephone is not feasible. Also, the notice was not issued to any person by the name of Anoop Kumar allegedly employed with M/s Khubram Oil Co. Hence, the respondent has thereforee, no knowledge of any case pending against him before this Hon'ble Court.'

5. The learned counsel for the respondent has produced the record of the Labour Court on affidavit where the following noting has been made about the service of the Police Station, Punjabi Bagh on 11th March, 2000.

'Sd/-

Anoop Kumar

Sir,

The summons of M/s Khub Ram Oil Company have been served on Shri Khub Ram and Shri Khub Ram has also been informed telephonically on whose instance, the summons were served on his employee.

Report is submitted accordingly.

'Sd/-

P.S. Punjabi Bagh

11.3.2000.

He has also filed the note based on the service of the Labour Inspector on ,19th January, 2000 as follows:

'..... On 19.1.2000, the undersigned meet at 9.30 AM and again at 3.00 P.M. but could not contact Shri Khub Ram. Shri Naresh Kumar also replied in earlier fashions:

Accordingly, finding no other alternative the summons were pasted at the main gate of the company. Report is submitted accordingly. Sd/- Sd/-(Sat Pal Arora) WITNESS.Labour Inspector R/o H.No. WZ-212, HastsalUttam Nagar, Delhi.'

6. Both the above notes are detailed and believable. Note of the Police Station, Punjabi Bagh clearly states that the officer even talked to Shri Khub Ram, the proprietor of the petitioner and thus the assertion that the petitioner was not aware of the proceedings is unbelievable. Even the report of service by the labour department clearly indicates that the petitioner was duly served. Accordingly, I am not satisfied that the Explanationn sought to be given for the absence of the petitioner was justifiable and indeed bona fide. The conduct of the petitioner throughout shows that the he is interested in prolonging the proceedings which is evident from the fact that inspire of the specific orders of this Court dated 1st May, 2002 and 15th January, 2003, a copy of the writ petition has still not been served on the learned counsel for the respondent. This conduct in my view amply demonstrates that the petitioner's objections are not bona fide and he is not interest in early disposal of the petition. This also supports the plea of the respondent that the absence of the petitioner before the Commissioner Workmen's Compensation was calculated and deliberate and he was fully cognizant of the proceedings.

7. I am thus satisfied that no case is made out to interfere with the order of the Commissioner, Workmen's Compensation. The writ petition is dismissed accordingly.

8. Learned counsel for the petitioner has submitted that his client was ensured with the United India Insurance Company. The dismissal of this writ petition will not come in the way of the petitioner in seeking such recompense by United India Insurance Company by initiating appropriate proceedings in accordance with the law and seeking the condensation of delay in processing such a claim pursuant to this judgment.

9. In case a claim based on the claim of the respondents predecessor is made by the petitioner against the Insurance Company the same will be heard and disposed of expeditiously on merits.

10. Pendency of such proceedings if any commenced by the petitioner against the United India Insurance Company will not come in the way of the implementation of the award passed by the Commissioner, Workmen's Compensation.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com