

IN THE HIGH COURT OF JHARKHAND, RANCHI

M. A. No. 248 of 2010

M/s Janta Motor Works, Ranchi and Anr. Appellant(s)

Versus

Deputy Regional Director, Ranchi & Anr. Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH

For the Appellant(s) : Mr. S. K. Dwivedi, Advocate.

For the Respondent(s) : Mr. Ashutosh Anand, Advocate

Order No.29, Dated 06.12.2017.

1. I.A. No.6180 of 2015 has been filed under Order XLI Rule 27 read with Section 151 Cr.P.C., 1908 on behalf of the respondents on 27.10.2015.
2. Learned counsel for the respondents submits that the appellant failed to pay the contributions and further neglected to file returns, after due process, Complaint Case III- 118/2005 was instituted wherein the appellant and the answering respondent placed their evidences and by judgment dt. 30.01.2013, the appellant and its owner were convicted for the offences and sentenced to undergo imprisonment and fine.
3. It has been submitted that on account of communication gap, shifting of office, non-receipt of entire papers, fighting litigation before two different authorities, etc., the answering respondents could not bring the said documents on record earlier.
4. It has been submitted that the respondent was not knowing of the aforesaid facts earlier and only after stern actions and enquiry being occasioned by him, he came to know of the said facts and has brought the same by filing counter affidavit and this application.
5. It has been submitted that the respondent has been diligently pursuing the matter and immediately upon coming to know of the said documents, is filing the same herein.
6. It has been further submitted that the aforesaid documents and details as stated in para 7 to 10 are necessary for the proper appraisal of the matter and the adequate disposal thereof.
7. It has been submitted that the respondent has raised good defence in the instant memo of appeal and has every chance in succeeding, therein.
8. Rejoinder has been filed on behalf of the appellant(s) opposed the instant I.A. as well as additional evidence under Order XLI Rule 27 read with Section 151 C.P.C., 1908.

9. Learned counsel for the appellant submits that with respect to paragraph no. 3 of the I.A. it is stated and submitted that the documents which were not even tried to be produced before the Labour Court cannot be allowed to be brought on record to further improve the case of the respondents.
10. It has been submitted that with respect to paragraph nos. 4, 5 and 6 of the I.A. it is stated and submitted that the contents made herein are lame excuse which is fit to be rejected. There was sufficient time with the respondent to bring the required document on record before the Labour Court hence the plea of respondents has no leg to stand.
11. It has been submitted that with respect to paragraph no. 7 of the I.A. it is stated and submitted that the respondents have themselves admitted in this para that said letter was neither returned back nor acknowledgment received. In this view of the matter there cannot be a valid service of notice. Incidentally, the provision of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal- it does not authorize any lacunae or gaps in evidence to be filled up.
12. It has been submitted that with respect to paragraph no. 8 of the I.A. it is stated and submitted that this letter has got no relevance, on the allegation it was rightly directed to be enquired into. After such a long period of filing of the Appeal the document cannot be allowed to be brought on record to fill up the lacunae of the respondents.
13. It has been submitted that with respect to paragraph no. 9 of the I.A. it is stated and submitted that vide Ext. 5, Annexure -6 of the Appeal the Corporation willing to send Vigilance Team to enquire into the dispute of coverage. Ext.-6 which was signed off by the team shows that only the persons were working. Moreover, in letter dated 29.3.2005 also it is admitted by the respondents that 3 and 4 employees were working. Hence the Appellant is not covered under the Act. The authority and jurisdiction as conferred on the appellate court to let it in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.
14. It has been submitted that with respect to paragraph no. 10 of I.A. it is stated and submitted that both the matters are distinct. However, the Judgment dated 30.1.2013 was taken in Appeal and during the pendency of Appeal against the judgment dated 30.1.2013 Md. Moinuddin died hence the said Appeal is closed.
15. It has been submitted that with respect to paragraph nos. 11 to 16 of the I.A. it is stated and submitted that stands taken in these

paras by the respondents are fit to be rejected. The dispute was raised in 2006. The order in ESI case no. 2/2006 was passed on 13.8.2010. The Appeal was filed before this Hon'ble Court on 8.10.2010 but the application for permission to adduce additional evidence came to be made only on 27.10.2015. A plain reading of Order 41 Rule-27 would depict that the rejection of the claim for production of additional evidence after a period of five years from the date of filing of the appeal cannot be learned to be erroneous or an illegal exercise of discretion. The three limbs of Rule-27 do not stand attracted. The court below has not refused the respondents to bring on record the documents, no due diligence is shown behalf of the respondents. And this is not a case that there is impossibility to pronounce judgment without additional evidence.

16. It appears that the entire case hinges upon the finding of the learned court below with regard to issue no.1, as to whether notice was received by the appellant and was within the time or hit by the limitation.
17. Counsel for the respondent is directed to produce entire records including Page 13 and 14 of the application.
18. List this on 19.01.2018 for further hearing.

(Anant Bijay Singh, J.)

Sandeep/