

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 20008/2010

(Arising out of impugned final judgment and order dated 28/06/2010 in A No. 348/2009,28/06/2010 in WP No. 322/2009,28/06/2010 in A No. 348/2009,28/06/2010 in WP No. 322/2009 passed by the High Court Of Bombay)

M/S SHROFF TEXTILES LTD.

Petitioner(s)

VERSUS

CHANDRASHEKAR POOJARI  
(Prayer for interim relief and office report)  
(For final disposal)

Respondent(s)

Date : 17/07/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s)

Mr. Sunil Fernandes ,Adv.  
Mr. Raghav Chadha, Adv.

For Respondent(s)

Mr. Bharat Sangal ,Adv.  
Ms. Srijana Lama, Adv.  
Ms. I. Abenla Aier, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of in terms of signed order.

(Neeta)  
Sr. P.A.  
(Signed order is placed on the file)

(Usha Sharma)  
Court Master

Signature Not Verified

Digitally signed by  
Neeta Sapra  
Date: 2014.07.26  
13:55:34 IST  
Reason:

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6486 OF 2014  
(Arising out of SLP(C) No. 20008 of 2010)

M/S SHROFF TEXTILES LTD.

Appellant(s)

VERSUS

CHANDRASHEKAR POOJARI

Respondent(s)

O R D E R

Leave granted.

This appeal has been preferred by appellant against order dated 28th June, 2010 passed by the High Court of Bombay in Appeal No. 348 of 2009. The impugned order reads as follows:

"Heard the learned counsel for both sides. There is a finding of fact recorded that even accepting the case of the Appellant there was at least six days delay in making an application for setting aside the ex parte award, and therefore the learned single Judge has rightly dismissed the petition. There is no substance in the appeal. Appeal is, therefore, rejected.

Request made by the learned counsel for the appellant to stay the execution is rejected."

The factual matrix of the case is as follows:

An ex-parte award was passed by Presiding Officer, 7th Labour Court, Mumbai on 24th November, 2006 against the appellant holding the respondent to be entitled for reinstatement with full back wages and continuity of services w.e.f. 1st February, 1999. Being aggrieved, the appellant filed an application under Rule 26(2) of the Industrial Dispute (Bombay) Rules, 1957 for setting aside the ex-parte award dated 24th November, 2006 and for consequential relief of restoration of Original Reference (IDA) No.264 of 2000. The Labour Court by order dated 2nd September, 2008 dismissed the

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Misc. Application (IDA) No.24 of 2007 on the ground that the ex-parte order was received by appellant on 12th April, 2007 and hence application was barred by time and also made certain observations on merit of the application for restoration.

Being aggrieved, the appellant challenged the said order in W.P. No.322 of 2009 before the High Court of Judicature at Bombay. Learned Single Judge of the High Court by order dated 16 th March, 2009 dismissed the writ petition on the ground that there was a delay of six days for making the application for setting aside the award which was passed ex-parte.

Learned counsel for the appellant submitted that the impugned order is a non-speaking order and the application for setting aside the ex-parte award was preferred by appellant within time.

On the other hand, according to learned counsel for the respondent, the application for setting aside the ex-parte award

was barred by six days.

The above said ex-parte Award was passed by Presiding Officer, 7th Labour Court, Mumbai on 24th November, 2006. According to the appellant, copy of the award alongwith copy of notification was received by appellant on 17th April, 2007. Under Rule 26(2) of the Industrial Disputes (Bombay) Rules, 1957, the application for restoration is required to be filed within 30 days from the date of receipt of the award. Therefore, according to appellant, the restoration application was filed within 30 days i.e. well within time.

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It is pleaded by the appellant that the copy of the award along with xerox copy of notification was served on him on 17 th April, 2007.

However, we find that the Presiding Officer, 7th Labour Court, Mumbai held that the appellant had knowledge about the ex-parte order on 12th April, 2007, the date of receipt. There being a dispute about the date of knowledge of the award (12 th April, 2004) and the date of actual serving of the copy of award upon appellant (17th April, 2007), we are of the opinion that the High Court should have dealt with the question as to when the copy of award was served. The Division Bench without discussing the aforesaid fact, by cryptic order dismissed the appeal preferred by the appellant.

For the reasons aforesaid, we set aside the order dated 28 th June, 2010 passed by the Division Bench of High Court of Judicature at Bombay in Appeal No. 348 of 2009 and the order dated 16th March, 2009 passed by learned Single Judge of the High Court of Judicature at Bombay in Writ Petition No. 322 of 2009. The Writ Petition No.322 of 2009 is remitted back to the High Court for its decision as to when the copy of award was served on appellant and the appeal was thus within time or was barred by Limitation.

The appeal is disposed of with the aforesaid observations.

.....J.  
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.  
(S.A. BOBDE)

NEW DELHI;  
JULY 17, 2014