

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2016

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

W.P.NO.5618/2013 (L-WC)

BETWEEN:

CHAMUNDESHWARI ELECTRICITY SUPPLY
CORPORATION (CESC)
BELUR, HASSAN DISTRICT-573 115
REPRESENTED BY ITS
ASST. EXECUTIVE ENGINEER
SRI. A.P. MALLIKARJUNA SWAMY.

... PETITIONER

(BY SRI.DEVRAJ, ADVOCATE FOR
SRI N KRISHNANANDA GUPTA, ADVOCATE)

AND:

1. SRI MAHESH NAYAK
SINCE DEAD BY HIS LRS
- 1(a) SMT. KAMALA BAI
W/O SRI. RAMANAYAK
RESIDING AT
KURUBARAHALLI THANDPA
KASABA HOBLI
MATHIGATTA POST
KADUR TALUK-577548.
2. SRI. CHANDRASHEKARAI AH
S/O SRI. GANGADHARAPPA
MAJOR IN AGE
ELECTRICAL CONTRACTOR
HEBBAL VILLAGE
HALEBEEDU HOBLI
BELUR TALUK-573 115
HASSAN DISTRICT.

3. COMMISSIONER OF EMPLOYEE'S
COMPENSATION (WRONGLY
DESCRIBED AS THE
COMMISSIONER FOR
WORKMEN'S COURT)
SUB-DIVISION-2
CHIKMAGALUR-577 101.

... RESPONDENTS

(BY SRI.ANANTHA H, HCGP FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH ANNEXURE-A DATED 23.02.2011 IN CASE NO.W.C.A.N.F.C.8/2008 ON THE FILE OF THE R-3 & ANNEXURE-F DATED 16-20/10/2012 IN CASE NO.NIL ON THE FILE OF THE R-3 BY ISSUE OF A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT ORDER.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Order passed by the Commissioner for Workmen's Compensation, Sub-Division-2, Chickmagalur (for short 'Commissioner') dated 23.02.2011 awarding compensation of ₹ 1,43,448/- with interest @ 12% p.a. payable after 30 days from the date of award - Annexure-A and endorsement dated 16/20-10-2012 - Annexure-F dismissing the applications filed by writ petitioner under Order 9 Rule 13 CPC and application

filed under Section 5 of the Limitation Act, 1963 are questioned in this writ petition.

2. During pendency of the present writ petition, claimant i.e., first respondent herein had expired and his Legal Representative i.e., wife had been brought on record. Legal representative of deceased first respondent though served, is unrepresented and service of notice on her has been held sufficient vide order dated 11.01.2016. Hence, writ petition is taken up for final disposal.

3. Heard Sri Devraj, learned Advocate appearing on behalf of Sri N.K.Gupta for petitioner and Sri Anantha H, learned HCGP appearing for respondent No.3. Perused the records.

4. A claim petition came to be filed under Section 30(1) of the Employees Compensation Act, 1923 by deceased first respondent contending interalia that he had sustained injury in the course of employment under writ petitioner and second respondent –

contractor. Notice came to be issued by the Commissioner to respondents therein i.e., writ petitioner herein and second respondent. Impugned order dated 23.02.2011 would indicate that service of notice on the writ petitioner was held sufficient and as such, Commissioner for Workmen's Compensation proceeded to adjudicate the claim of deceased first respondent and by judgment and award dated 23.02.2011 allowed the claim petition in part and awarded a total compensation of ₹ 1,43,448/- with interest @ 12% p.a.

5. As noticed herein above, on an appeal filed by deceased claimant seeking for enhancement of compensation, notice was issued on the writ petitioner and at that point of time, writ petitioner filed a petition under Order 9 Rule 13 CPC for setting aside award in question contending interalia that it is an exparte award and writ petitioner was not served before the Commissioner. Since said petition was filed belatedly, an application came to be filed under Section 5 of the

Limitation Act, 1963 seeking condonation of delay. Third respondent without hearing the writ petitioner has perused the contents of the petition filed under Order 9 Rule 13 CPC as also application filed under Section 5 of the Limitation Act and has arrived at a conclusion that there is no sufficient cause shown for condoning the delay and also held that plea of the writ petitioner for non appearance before the Commissioner having not been explained properly, petition as well as application for condonation of delay was liable to be rejected and accordingly impugned endorsement – dated 16/20-10-2012 -Annexure-F rejected the applications for delay and dismissed the petition filed under Order 9 Rule 13 CPC.

6. It is the contention of Mr.Devaraj, learned Advocate appearing for petitioner that when an application is filed under Order 9 Rule 13 CPC and application under Section 5 of the Limitation Act, burden is on such applicant to establish the cause for delay in filing the petition/application and as such,

third respondent authority ought to have granted an opportunity by permitting the writ petitioner to lead evidence and rejection of the petition as well as application for condonation of delay without hearing the petition is in violation of principles of natural justice. Said contention merits acceptance, inasmuch as, writ petitioner herein had been arrayed as first respondent in the claim petition which had been filed for award of compensation. Perusal of the averments made in the petition filed under Order 9 Rule 13 CPC would indicate that award in question had been challenged primarily on two grounds, namely, (1) there is no privity of contract between writ petitioner and the claimant; (2) secondly on the ground that second respondent therein had not been awarded any contract and workman was not entrusted with any work by his employer- second respondent and as such, even as a principal, employer-petitioner was not liable to indemnify the claim of the claimant. It was also further contended that notice was not served in the proceedings conducted before the Commissioner. Hence, writ petitioner had pleaded that

there has been delay in filing the petition under Order 9 Rule 13 CPC. Hence, seeking condonation of delay, application under Section 5 of the Limitation Act, 1963 had been filed.

7. As to whether writ petitioner had explained the cause for delay in not preferring the petition under Order 9 Rule 13 CPC was required to be substantiated by the applicant either by entering the witness box and tendering evidence or by filing appropriate affidavit in lieu of such evidence. In fact, this opportunity has not at all been extended by the Commissioner. Even without hearing the petitioner and notifying the petitioner said application has been rejected by impugned endorsement – Annexure-F, whereunder application under Section 5 of the Limitation Act as well as petition filed under Order 9 Rule 13 CPC filed by writ petitioner have been rejected summarily.

8. In that view of the matter, impugned endorsement dated 16/20-10-2012 - Annexure-F cannot be sustained.

9. Hence, I proceed to pass the following:

ORDER

- (i) Writ petition is hereby allowed in part;
- (ii) Endorsement dated 16/20-10-2012 passed by Commissioner of Workmen Compensation, Sub-Division-2. Chickmagalur —Annexure-F is hereby set aside and matter is remitted back to the jurisdictional Commissioner for Workmen's Compensation being forwarded to jurisdictional Civil Court.
- (iii) Registry shall transmit the case papers to jurisdictional Commissioner for Workmen's Compensation.
- (iv) On further transmission of records to Jurisdictional Civil Court, it shall

adjudicate the petition under Order 9 Rule 13 CPC and also application filed under Section 5 of the Limitation Act, 1963 on merits and in accordance with law, within (4) four weeks from the date of receipt of copy of this order.

- (v) All contentions raised by the petitioner with regard to cause for delay in filling the petition and cause for not appearing before the Commissioner are kept open. No opinion is expressed in this regard.

Ordered accordingly.

Sri Anantha H, learned HCGP is permitted to file memo of appearance on behalf of respondent-3 within four weeks from today.

**SD/-
JUDGE**