

**IN THE COURT OF SH. S.C YADAV, COMMISSIONER**  
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)  
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI  
5, SHAM NATH MARG, DELHI-110054

No. WCD/64/NW/06/Misc.-1/2020/245.

Date: 21/07/2023.

IN THE MATTER OF:

**Sh. Umresh Kumar Mishra & Ors.**  
H No.44, Gali No. 13, Reda Mohalla,  
Labour Chowk, Railway Road, Samaypur,  
Delhi – 110042

...Applicant/Claimant

V/s

**Sh. Ashok Yadav @ Ashok Lala S/o Lt. Sh. Jeet Ram,**  
**Prachin Shiv Mandir and Dharamshala**  
Railway Road, Samaypur, Delhi – 110042

**Also At:**

House No. 236, Gali No. 7,  
Sameypur, Delhi - 110042

.....Respondent

ORDER

1. By this order, I will dispose of application dated 31/03/2023 filed on 03/04/2023 by the respondent/applicant management.
2. In this application respondent/applicant has submitted that they received a copy of letter dated 11/11/2019 on 04/12/2019 issued by Sh. Lallan Singh the then Ld. Commissioner Employee's Compensation under EC Act, 1923 GNCT of Delhi, Labour Welfare Centre, Nimri Colony, Ashok Vihar Phase-IV Delhi addressed to District Collector, District North Office, Alipur Delhi to recover the compensation amount of Rs. 3,94,120/- along with the interest @ 12% till the date of realisation w.e.f. 18/02/2006 in terms of order dated 25/09/2013 passed by the Ld. Commissioner Employee's Compensation. It is further submitted that respondent/applicant was shocked to receive the said intimation as respondent was not aware about the proceeding before the Ld. Commissioner. Respondent never received any notice or intimation with respect to the said proceedings against him. After this respondent applied for certified copies of the case file and was provided to him on 12/12/2019.



3. After pursuing the certified records of this case, respondent came to know that the petition bearing No. WCD/64/NW/06/8459-60 was filed by the petitioners against respondent before the Commissioner Employee's Compensation and the Ld. Commissioner Workmen's Compensation was pleased to pass an ex-parte order dated 28/04/2011 against the respondent/applicant and thereafter matter was proceeded/heard ex-parte against the respondent. After hearing the matter the Ld. Commissioner Workman's compensation was pleased to pass an ex-parte order/decreed on 25/09/2013. Vide this order Ld. Commissioner directed respondent/applicant to pay sum of Rs. 3,94,120/- along with the interest @ 12% till the date of realization w.e.f. 18/02/2006 to the petitioners.
4. It is further contended that the respondent/applicant moved an application dated 13/01/2020 under order 9 Rule 7 to set aside ex-parte order dated 28/04/2011 and under order 9 Rule 13 to set aside decree/final order dated 25/09/2013 along with application seeking condonation of delay under said application under order 9 rule 7 was disposed off on 01/04/2021 by not condoning the delay as prayed for.
5. By way of filing this application respondent/applicant has requested under order 9 rule 13 to set aside ex-parte decree dated 25/09/2013 along with an application seeking condonation of delay on the ground that the respondent/applicant had not served any notice at the correct address at any point of time. Further respondent/applicant submitted that, the address of the respondent/applicant in the original compensation application has been mentioned as , "*Sh. Ashok Yadav @ Ashok Lala, head of Prachin Shiv Mandir and Dharamshala, Railway Road, Samaypur, Delhi*" with which the respondent / applicant had no concern at any point of time, whatsoever, be its management or the affairs. Further respondent/applicant has taken ground that the petitioners filed an application before the Ld. Commissioner on 17/10/2007, the furnishing the correct address of the respondent/applicant, which admittedly was the correct address of the respondent/applicant. But despite this all the summons were again sent at Prachin Shiv Mandir and Dharmshala, Railway Road, Samaypur, Delhi. Which clearly shows that there was a deliberate attempt to have the respondent/applicant proceeded ex-parte.
6. In the last respondent/applicant prayed that since no notice was ever served to the respondent/applicant by the Commissioner Workman's Compensation before passing the ex-parte order and decree against the respondent as such same to be set-aside and respondent/applicant to be granted right to enter into appearance and to file written submission and to decide the case as a fresh.





7. Petitioner/workman filed counter reply wherein claimant denied all the contents of application of respondent/applicant on the ground that as per findings of award dated 25/09/2013 previously on 17/10/2007 the respondent had already been proceeded ex-party but this Ld. Authority has set aside ex-party order and again sent notice to the respondent on a fresh address, but despite service of notice no one appeared on behalf of the respondent and this Authority was again proceeded ex-party on 28/04/2011 and thereafter award was passed. In nut and shell claimant denied all the contents of application of respondent/applicant in toto and prayed that present application of respondent/applicant to be dismissed with heavy cost in the interest of justice.
8. Oral submissions were adduced from Ld. Counsels appearing for the parties have been heard in detail. After going through the records of the case file it has found that before proceeding ex-party order sufficient opportunities were provided to the respondent to appear and to defend his case. On this line the then Ld. Authority had set aside ex-party order one time and thereafter at new address of the respondent as provided by the petitioner notices was sent on 27/01/2011 and 21/03/2011 to appear on 17/03/2011 at 11:30 AM and 28/04/2011 at 10:00AM before the Authority. Notice dated 21/03/2011 was duly served upon respondent by P.S Badli and the reports regarding service of summon was placed on record, which indicates that the notice was received by the respondent. Despite that no one appeared for the respondent to defend his case before the then Ld. Commissioner. As such at this stage when final order was passed by the then Ld. Commissioner on 25/09/2013 and subsequent recovery certificate dated 11/11/2019 was issued for recovery of the ordered amount to District Collector-Alipur, Delhi, application in question is not considerable as the submission made by the respondent in the present application dated 31/03/2023 filed on 03/04/2023 are not justified the contents of the application. Hence I do not find any merit on the application in question as such same is rejected, accordingly disposed off.
9. Given under my hand and seal of this Authority on this 9<sup>th</sup> day of July, 2023.

(S.C. Yadav)  
Commissioner  
Employee's Compensation Act, 1923

