

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 9773 of 2009**

% Decided on: 9th August, 2010

M/S. CONDOR Petitioner
Through : Mr. Kailash Vasdev, Sr. Adv. with
Mr. Siddharth Dias, Advocate.

Versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents
Through : NEMO.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India praying for the following:

(a) Issue a Writ of Certiorari or any other direction calling for the records of the case and to set aside the Ex-parte Award dated 27.08.2007, and the other order passed by the Learned Presiding Officer, Labour Court, Vide which the Petitioner was proceeded ex-parte and to allow the petitioner to contest the alleged industrial dispute on merits.

(b) Issue a writ of prohibition or any other appropriate order calling upon the respondents to forbear, cease and desist from giving effect to the award dated 27.08.2007 passed

by the Learned Labour Court.

2. The petitioner is a partnership firm engaged in the business of providing home furnishings. Till October 2004 the petitioner firm was operating the business from M.B. Road, Lado Sarai, New Delhi. According to the petitioner, as MCD sealed the office/showroom of the petitioner in the month of October 2004, the petitioner shifted its working place at 792, Udyog Vihar, Phase-V, Gurgaon, Haryana. The respondent No.2 joined the petitioner firm on the post of final checker.

3. As per the petitioner on 8.1.2005, the respondent No.2 abandoned her job and did not return to the establishment of the petitioner management. The last drawn wages of the respondent No.2 were Rs.3,300/- per month. At the time of abandonment of her job, she was working at Gurgaon Office without any reluctance.

4. On 7.5.2005 the respondent No.2 served a demand notice through the trade union and later on she raised an industrial dispute before the Conciliation Officer under the Industrial Disputes Act before the labour authorities. On 17.5.2005 the respondent No.2 filed a complaint with the Police Station Udyog Vihar, Gurgaon alleging that she was employed with the petitioner at its office and during her employment when she demanded her statutory dues, she was harassed by the supervisor. It was found that the police complaint was not proceeded and later on it was withdrawn by the respondent No.2. In October 2005, the matter was referred for adjudication to the Labour Court-VI, vide order No.F.24(1678)/05/Lab./1093034 with the following terms:

“Whether services of workman, Smt. Santosh, D/o Shri, Misri Lal have been terminated by the management illegally and/or unjustifiably and if so, to what sum of

money as monetary relief along with other consequential benefits in terms of existing Govt. Laws/notification and what other relief is she entitled to and what directions are necessary in this respect?"

5. In January 2007 the respondent No.2 filed a statement of claim. Later on the petitioner was proceeded ex-parte. The respondent No.2 filed her affidavit by way of evidence. The Labour Court passed an ex-parte award dated 27.8.2007 reinstating the respondent No.2 with full back wages and continuity of the service. The present writ petition has been filed on 30.6.2009 under Article 226 of the Constitution of India for setting aside the ex-parte award dated 27.8.2007 of the Labour Court, inter alia, on the following grounds:

- (a) That the demand notice issued by the respondent No.2 through trade union was not received by the petitioner nor notice was served on the management pertaining to the industrial dispute before the Conciliation Officer under the Industrial Disputes Act. The notice on statement of claim was not received. Therefore, the written statement could not be filed as the petitioner was unaware of any adjudication proceedings before the Labour Court.
- (b) According to the petitioner, when the ex-parte award was subsequently published, it came to the notice of the petitioner for the first time when a notice was issued by the Assistant Labour Officer, Implementation Cell, Labour Department, at 5, Sham Nath Marg, Delhi-52, with regard to

implementation of the award. According to the petitioner, the application to set aside the ex-parte proceedings could not be filed at that time as the award was already published and after the expiry of 30 days from the date of publication of the award in the Gazette it became *functus officio*. The application was not maintainable in view of Sections 17 and 17-A of the Industrial Disputes Act.

6. Learned counsel for the petitioner has referred the decision of ***Sangham Tape Co. Vs Hans Raj***; (2005) 9 SCC 331 wherein it was held as under:

“an industrial adjudication is governed by the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’) and the rules framed thereunder. The rules framed under the Act may provide for the applicability of the provisions of the Code of Civil Procedure once the provisions of the Code of Civil Procedure are made applicable to the industrial adjudication. Indisputably, the provisions of Order XI. Rule 13, thereof would be attracted. But unlike an ordinary Civil Court, the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An Award made by an Industrial Court becomes enforceable under section 17 A of the Act on the expiry of thirty days from the date of its publication. Once the Award becomes enforceable the Industrial Tribunal and/or Labour Court becomes *functus officio*.”

7. The next submission of the petitioner is that on the date of abandonment of service. i.e. 8.1.2005 (the date of termination as alleged by respondent No.2), the establishment of the petitioner was operating from Gurgaon as the petitioner management had closed down its establishment at Delhi in October 2004. Thus, situs of employment being Haryana, the industrial dispute was beyond the jurisdiction of the Labour Courts at New Delhi. The contention of the petitioner is that since the petitioner was ex-parte, the said

fact was not brought to the notice of the Labour Court by the respondent No.2. Therefore, the Labour Court did not consider the situs of employment in the award while passing the order of reference under Section 10 of Industrial Disputes Act, 1947 as the said order was passed by the Labour Court in mechanical manner.

8. As far as the contention of the petitioner that the petitioner has not been served with the notice issued by the Court, it has no force as there is sufficient material on record to show contrary to the contention raised by the learned counsel for the petitioner. It appears that when the statement of claim was filed by the respondent No.2 the latest address of the petitioner was mentioned. Further the court when sent the registered AD cover at the new address of the petitioner at Gurgaon, the petitioner refused to receive the registered AD cover issued by the Labour Court. The courier receipt is also placed on record in order to show that the notice was served on the petitioner informing that the matter was fixed for hearing by the Labour Court on 22.7.2010. But at the same time, the petitioner is entitled to file the application to set aside ex-parte proceedings before the trial court. As already observed that the said application could not be filed by the petitioner in view of prohibition under Sections 17 and 17-A of the Act.

9. Regarding the second submission about the situs of employment is concerned, it is not disputed by the respondent No.2 that establishment of the petitioner was closed down in October 2004 and it was shifted to Haryana on the date of raising the dispute. The respondent No.2 was very much aware about the said fact as according to respondent No.2 herself, she was terminated

on 8.1.2005. Thus, the situs of the employment has not been considered by the Labour Court while passing the ex-parte award dated 27.8.2007.

10. This matter was listed from time to time. However, no one appeared on behalf of respondent No.2 on various dates i.e. 08.1.2010, 23.2.2010 and 22.7.2010 to address submissions. Even no counter affidavit has been filed by the respondent No.2 despite an opportunity granted by the Court.

11. Under these circumstances, I am of the view that there is a force in the submissions of the learned counsel for the petitioner. The writ petition is allowed. The ex-parte award dated 27.8.2007 is set aside. The petitioner is granted four weeks time to file the appropriate application to set aside the ex-parte proceeding before the trial court who will consider petitioner's application as per its own merit. Parties shall appear before the Labour Court VI, Karkardooma Courts, Delhi, on 8th September, 2010. Copy of the order be sent to the trial court along with record within ten days from today.

MANMOHAN SINGH, J.

AUGUST 09, 2010
jk/dp