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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th September, 2018

+ W.P.(C) 9829/2018

DINESH PAL

..... Petitioner

Through : Mr. Sudhir Sharma, Adv.

versus

GNCT OF DELHI AND ANR.

..... Respondents

Through : Mr. Barnali Basar, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. This writ petition impugns an award dated, 19th February, 2018, passed by the Labour Court, on an application filed by the petitioner under Section 37-C (ii) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"). The petitioner had, in the said application, sought recovery of Rs.1,67,592/- from Respondent No. 3.

2. The facts, as set out in the impugned award, disclose that, in September, 2012, Respondent No. 3 had awarded, to the petitioner, a contract of white washing the premises at Flat No. 83, Udyog Vihar, Phase-VI, Sector-37, Gurgaon, Haryana. It is admitted, by the petitioner, in his statement of claim, that, pursuant to the said contract, he had employed eight employees, who had carried out the work of white washing purportedly to the entire satisfaction of Respondent

No.3. Asserting that, despite the said work having been carried out, payment had not been paid by Respondent No. 3 in accordance with the contract, an application, under Section 37-C (2) of the ID Act was moved by the petitioner, before the Labour Court.

3. Respondent No. 3, responding to the claim of the petitioner, steadfastly denied having appointed the petitioner for any kind of work. An objection of territorial jurisdiction was also taken on the ground that the work was carried out outside the territorial jurisdiction of the Delhi Court at Gurgaon.

4. The Labour Court framed the following issues, arising for its consideration in its order dated 14th March, 2016 thus :

“1. Whether this Labour Court at Delhi has no jurisdiction to entertain and decide the present labour claim application?
OPM

2. Whether any amount is required to be calculated by this labour Court as alleged in the claim? OPW

3. Relief.”

5. Recording of evidence commenced; however, at the stage of cross-examination of the petitioner, Respondent No. 3 stopped appearing. Accordingly, Respondent No. 3 was proceeded *ex-parte* on 16th September, 2017.

6. The petitioner examined himself as WW-1 and filed his affidavit in evidence, which was exhibited as Ex.WW-1/A. In his

affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which were exhibited as Ex.WW-1/2 to Ex.WW-1/5.

7. The Labour Court adjudicated all the issues framed by it against the petitioner and in favour of Respondent No. 3. On the issue of territorial jurisdiction, it was held that there was nothing to indicate that the petitioner had ever worked within the territorial jurisdiction of Delhi. On issue No. 2, it was found, by the Labour Court, that the petitioner had not claimed, either in his statement of claim or in his affidavit in evidence (Ex.WW-1/A), that he himself was employed by Respondent No. 3. The averments contained in the statement of claim, and in the deposition of the petitioner, examining himself as WW-1, it was found, indicated, rather, that a contract for white washing the premises had been entered into, between Respondent No. 3 and the petitioner, and that there was, therefore, no employer-employee relationship between two. Having entered into such a contract, the Labour Court found that the petitioner could not arrogate, to himself, the status of a “workman”, as defined in Section 2(s) of the ID Act.

8. Following on the above findings, the Labour Court held the dispute itself not to be maintainable before it and, accordingly, dismissed the statement of claim filed by the petitioner.

9. Purportedly aggrieved thereby, the petitioner is before this Court in the present proceedings.

10. I have heard learned counsel for the petitioner at considerable length.

11. There are asseverations, in the writ petition, to the effect that the petitioner was himself working at the premises of Respondent No. 3. However, no such averment, either direct or indirect, is to be found either in the statement of claim filed by the petitioner before the Labour Court or in his affidavit-in-evidence filed in the said proceedings. Paras 1 to 12 of the statement of claim may, in this context be reproduced, to advantage, as under :

“1. That the workman is a painter by profession and doing the work of white wash.

2. That in the month of September, 2014 the management has given the contract for white wash work of 20,494 Sq. ft. Rs.8/- per Sq. ft. to the workman at Plot no. 83, Udyog Vihar, Phase-VI, Sector-37, Gurgaon, Haryana.

3. That the management asked the workman to complete the work as soon as possible for which the workman had further appointed 8 workers to complete the above said work in given time.

4. That the workman completed the work of the management as per their satisfaction and for the said work, the net amount is due upon the management i.e. Rs.1,67,592/- but the management had not paid a single penny to the workman from this amount.

5. That the amount of Rs. 1,67,592/- is still due upon the management as legal liability against the management and the management is liable to pay the said amount to the workman as the workman has worked as ordered by the management.

6. That the workman has spent more than sufficient amount and labour on the completion of the said work and the workman is to pay labour charges and other liabilities to the labourer of the above said work done, but the workman is

unable to pay the labour charges etc. as the management has not made the above said payment.

7. That the workman approached so many times to the management for releasing the payment of the work done but the management always gave excuses to the workman regarding payment and keep on saying the workman that he will make the payment in near future.

8. That the workman also made a complaint to the Bhartiya Labour Union, Dakshinpuri Extn., New Delhi-1100 62 and the labour union summoned the management to appear on 13.01.2014 but the management did not bother to appear before the Labour union.

9. That finding no other way, the workman has sent a legal notice through his counsel to the management on dated 26.02.2014 but the management neither replied to the abovesaid notice nor made any payment to the workman.

10. That the management has defaulted in the payment of the white wash work done by the workman for which the workman is suffering from harsh difficulties as he is the only bread earner in his house and he has to discharge the liability of the other labourer also.

11. That the management has cheated the workman intentionally and the management has caused a wrongful loss to the workman in order to default the payment of the amount of the workman and therefore, the management caused a wrongful gain to them.

12. That the workman is legally entitled to recover a sum of Rs.1,67,592/- (Rs. One lakh sixty seven thousand and five ninety two rupees) from the management.”

12. The affidavit-in-evidence, as filed by the petitioner before the Labour Court, also deposed substantially to the same effect. Paras 1 to 5 of the said affidavit-in-evidence read thus :

“1. That the deponent is worker of painting by profession by doing work of White Wash.

2. That on the ground of Annexure-A and Annexure-B, C & D, Quotation of dated 15.12.2013 and second Quotation of dated 06.05.2013, 01.09.2013, 03.09.2013, 04.09.2013, 24.09.2013 which is signed by the Director of management of M/s Parth Exports & Anr. and received by worker of total of amount of Rs.33, 000/- received by worker only other worked domestic and balance amounts 1,67,5'92/- is payable by the management.

3. That the management has given the contract as per the above said documents for white wash work of 20494 Sq. Ft. on the rate @ Rs. 8 per Sq only for single base, to the worker/deponent at/for Plot no. 83, Udyog Vihar, Phase-VI, Sector-37, Gurgaon, and as per the direction of the management three base work done by the worker/deponent, therefore relation has been prove and as per quotation later which is signed by member of Parth Export management/Director, liability is also proved.

4. That the worker/deponent appointed 8 worker to complete work of management as per given time, deponent completed the work of management as per their, satisfaction but deference amount 1,67,592/- is due upon the management-which is not paid to the workman by the management. Management knowingly, deliberately on pride prejudice mind on the account of mischief had not paid a single penny of the balance amount to the deponent.

5. That the worker/deponent has spent more money to the associate worker as per order of management and payment not paying to the worker/deponent by the management.”

13. Following the above recital in para 1 of the affidavit-in-evidence, the petitioner, as WW-1, has averred that he is “legally entitled to receive Rs.1,67,592/- with interest from the management”.

14. Learned counsel for the petitioner has also taken me through various documents, which include a receipt by Respondent No. 3 regarding payment, a quotation raised by the petitioner for the work

carried out by him for Respondent No. 3 and payments made in this regard. These documents, too, only go to substantiate finding, of the Labour Court, that the relationship between the petitioner and the respondent was not of employer and employee but was purely in the realm of a “contract”, whereby the petitioner undertook to provide white wash services at the premises of Respondent No. 3.

15. The averment, in the writ petition, to the effect that petitioner was himself working at the premises is clearly in the nature of an afterthought, merely with a view to maintain this writ petition. No such averment figures in the record of the Labour Court. The said submission does not, therefore, merit any cognizance at this stage.

16. Section 2(s) of the ID Act defines “workman” in the following terms :

“2. Definitions.-

xxx

xxx

xxx

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

17. It is clear that a pure contractor, with whom a contract for providing white washing service is entered into, cannot elevate himself to the status of “workman” to maintain an industrial dispute. The liability of Respondent No. 3, qua the petitioner, if any, arose from the contract, and not from any relationship of employer and employee, between them.

18. In this view of the matter, I find no reason, whatsoever, to interfere with the impugned award of the Labour Court which is, consequently, sustained in its entirety.

19. In view of my above findings, I am not entering into the issue of territorial jurisdiction.

20. The writ petition is therefore, dismissed *in limine*, with no order as to costs.

C.HARI SHANKAR, J

SEPTEMBER 18, 2018/mk