

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 2790 of 2010 (W)

ORDER IN I.A.NO.127/09 IN ID 27/2008 of LABOUR COURT, KOLLAM DATED 22-09-2009

PETITIONER:

SREEDEVI VILASOM CHITTY FUND,
KOLADATHU VEEDU, PUNNAKULAM, K.S.PURAM
KARUNAGAPPILLY, REPRESENTED BY ITS
PROPRIETOR K.SANKARA PILLAI.

ADDL. PETITIONER.

SREE DEVI VILASAM CHITTY FUND
REPRESENTED BY ITS NEW PROPRIETOR D.SUSEELA DEVI
W/O.LATE SANKARA PILLAI
ALUMOOTIL (KOLADATHU) VEETIL, PUNNAKULAM MURI
ADINAD VILLAGE, KARUNAGAPPALLY TALUK.

(IMPEADED AS PER ORDER DATED 18.03.2015 IN IA 4109/15).

BY ADVS.SRI.ELDHO PAUL
SMT.LAKSHMI B.SHENOY

RESPONDENTS:

1. LABOUR COURT, KOLLAM.
2. R.CHANDRA PILLAI, KOCHUVEETIL,
KULASEKHARAPURAM, KARUNAGAPPILLY.

R2 BY ADV. SRI.PRATHEESH.P

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.2790/10

PETITIONER'S EXTS:

- EXT.P1: COPY OF REFERENCE ORDER DT.7.7.08 OF THE GOVERNMENT OF KERALA.
- EXT.P2: COPY OF CLAIM STATEMENT DT.27.11.08 FILED BY THE 2ND RESPONDENT.
- EXT.P3: COPY OF WRITTEN STATEMENT DT.10.2.2009 FILED BY THE PETITIONER.
- EXT.P4: COPY OF MEDICAL CERTIFICATE ISSUED BY THE MEDICAL PRACTITIONER.
- EXT.P5: COPY OF AWARD DT.8.4.2009 OF THE FIRST RESPONDENT.
- EXT.P6: COPY OF AFFIDAVIT AND PETITION DT.26.5.09.
- EXT.P7: COPY OF CERTIFICATES ISSUED BY THE AIIMS & RESEARCH CENTRE.
- EXT.P8: COPY OF ORDER DT.22.9.09 IN I.A.NO.127/09 IN I.D.NO.27/08.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

'CR'

ANIL K.NARENDRA, J

W.P.(C)No.2790 Of 2010

DATED THIS THE 10th DAY OF JUNE, 2015

JUDGMENT

This writ petition is filed by M/s. Sreedevi Vilasom Chitty Fund, a proprietary firm engaged in chit business. It was originally filed by the firm represented by its Proprietor Sri.K.Sankara Pillai, who died during the pendency of the writ petition. By order dated 18.3.2015 in I.A.No.4109/2015, the firm represented by its new Proprietor, who is the widow of late K.Sankara Pillai, was impleaded as additional petitioner.

2. The 2nd respondent, who is a licensed scribe by profession, has approached the District Labour Officer, Kollam, alleging that he was an employee of the petitioner firm and was denied employment with effect from 28.2.2007. On failure of conciliation proceedings, the Government referred the dispute for adjudication to the Labour Court, Kollam, vide Ext.P1 order in exercise of its powers under Section 10(1)(c) of the Industrial Disputes Act, 1947. Pursuant to Ext.P1, the matter was taken up for

adjudication before the Labour Court as I.D.No.27/2008.

3. The 2nd respondent-Workman filed Ext.P2 claim statement and the petitioner-Management filed Ext.P3 written statement. According to the Management, since Sri.K.Sankara Pillai, the then Proprietor of the firm was undergoing treatment for arthritis and rheumatism under Dr.J.Valsalakumar, which is evident from Ext.P4 medical certificate, there was no representation for the Management on 6.4.2009, and the counsel for the Management was also absent. Therefore, on 6.4.2009, the Management was set ex parte and the Workman was examined as WW1. After trial, the Labour Court passed Ext.P5 award on 28.4.2009 directing the Management to reinstate the Workman within two months from the date of award, with continuity of service, and to pay him a sum of ₹3,000/- being the salary for the month of February, 2007.

4. On coming to know about Ext.P5 award dated 28.4.2009, the Management filed Ext.P6 application to set aside the ex parte award, which was filed on 27.5.2009. But the Labour Court by Ext.P8 order rejected Ext.P6 application for setting aside Ext.P5 ex parte award. It is aggrieved by Ext.P8,

the Management is before this Court in this writ petition, seeking an order to set aside Ext.P5 award and Ext.P8 order of the Labour Court and also to direct the Labour Court to consider I.D.No.27/2008 afresh, after affording it an opportunity to adduce evidence.

5. I heard arguments of the learned counsel for the petitioner-Management and also the learned counsel for the 2nd respondent-Workman.

6. The petitioner-Management moved Ext.P6 application dated 26.5.2009 seeking an order to set aside Ext.P5 ex parte award passed by the Labour Court dated 8.4.2009 in I.D.No.27/2008, by which the Management was directed to reinstate the Workman within two months from the date of award, with continuity of service, and to pay him a sum of ₹3,000/- being the salary for the month of February, 2007. A reading of the affidavit accompanying to Ext.P6 application would show that, it contains the reasons for non-appearance of the Management before the Labour Court on 6.4.2009. It also contains the reasons for not filing Ext.P6 application within the prescribed time limit. In the said affidavit, the petitioner has

stated that, from 29.3.2009 to 28.5.2009, the then Proprietor of the firm was bed-ridden due to rheumatic complaints and was undergoing treatment under Dr.Valsalakumar. Ext.P4 medical certificate dated 25.5.2009 would show that, he was undergoing treatment for arthritis and rheumatism, from 29.3.2009 to 24.5.2009. But, the Labour Court by Ext.P8 order rejected Ext.P6 application filed by the Management.

7. A reading of Ext.P8 order would show that, the Labour Court rejected the said application noticing that, the then Proprietor of the firm had sworn an affidavit at the office of the counsel for the Management on 26.5.2009. If he was laid up as certified in Ext.P4 medical certificate, he could not have reached the Advocate's Office on that date in order to swear the affidavit accompanying to Ext.P6 application. The Labour Court also noticed that, the Management filed Ext.P6 application beyond the period of limitation of 15 days prescribed under Rule 23 of the Kerala Industrial Disputes Rules, 1957 and no application was filed by the Management to condone the delay in filing Ext.P6 application. Further, the Management has also not adduced any evidence to show that there was sufficient ground to condone the

delay occurred in filing Ext.P6 application. Though Ext.P6 application was posted for evidence, there was no appearance for the Management on that day. It was in such circumstances, the Labour Court by Ext.P8 order, rejected Ext.P6 application.

8. In exercise of the rule making powers conferred by Sub-section (1) of Section 38 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the State Government have made the Kerala Industrial Disputes Rules, 1957 (hereinafter referred to as 'the Rules'). Rule 23 of the Rules, which deals with setting aside ex parte decision, reads thus;

"23. Setting aside ex parte decision:-

(1) The Board, Court, Labour Court, Tribunal or Arbitrator may for sufficient cause set aside after notice to the opposite party the ex parte decision either wholly or in part on an application made within fifteen days of the ex parte decision. The Board, Court, Labour Court, Tribunal or arbitrator may extend the time on sufficient cause being shown.

(2) Such an application must be supported by an affidavit."

Therefore, Sub-rule (1) of Rule 23, empowers the Board, Court, Labour Court, Industrial Tribunal or Arbitrator, as the case may be, to set aside an ex parte decision, either wholly or in part, for

sufficient cause, on an application made within 15 days of the ex parte decision, after notice to the opposite party. Sub-rule (1) of Rule 23 provides that, the Board, Court, Labour Court or Tribunal or Arbitrator, as the case may be, may extend the aforesaid time of 15 days for making such an application, on sufficient cause being shown by the applicant. Sub-rule (2) of Rule 23 mandates that, an application filed under Sub-rule (1) must be supported by an affidavit.

9. The provisions under Rule 23 makes it explicit that, the said rule does not require that, an application filed under Sub-rule (1) of Rule 23, beyond the time limit of 15 days prescribed thereunder, should accompany a separate application to extend the aforesaid time limit. A conjoint reading of Sub-rules (1) and (2) of Rule 23 makes it abundantly clear that, the legal requirement of the said Rule is that, an application filed under Sub-rule (1), seeking an order to set aside an ex parte decision, should be supported by an affidavit disclosing sufficient cause for setting aside that ex parte decision; and if such application is not made within 15 days of the ex parte decision, sufficient cause for extending the said time limit should also be disclosed in that

affidavit. The legal requirement for a belated application under Rule 23 of the Rules will be satisfied if the affidavit accompanying the said application contains sufficient cause for setting aside the ex parte decision, as well as sufficient cause for extending the time limit of 15 days for making such an application. Therefore, the reasoning of the Labour Court in Ext.P8 order that, Ext.P6 application filed by the Management beyond the time limit prescribed in Rule 23 cannot be entertained, since no application was filed to condone the delay in filing such application, is legally unsustainable.

10. The provision of law quoted in Ext.P6 application filed by the Management is Order IX Rule 13 of the Code of Civil Procedure, 1908, instead of Rule 23 of the Kerala Industrial Disputes Rules, 1957. It is trite law that, quoting of a wrong provision of law will not dis-entitle the party to the relief sought for in that application. When the legal requirement under Rule 23 of the Rules, for a belated application to set aside an ex parte decision, is only to state sufficient cause for extending the time limit of 15 days for making such an application, along with sufficient cause for setting aside the ex parte decision, quoting of

a wrong provision of law, i.e., Order IX Rule 13 of the Code of Civil Procedure in Ext.P6 application will not in any manner deprive the Labour Court its powers to grant relief, which that Court is empowered to grant under Rule 23 of the Rules. Therefore, once the affidavit accompanying the application contains sufficient cause for setting aside the ex parte decision and also for extending the time limit of 15 days for making such an application, the Labour Court should adjudicate the said application treating it as one filed under Rule 23 of the Rules.

11. The other reasons stated in Ext.P8 order for rejecting Ext.P6 application are that, the then Proprietor of the firm, who was laid up due to arthritis and rheumatism from 29.3.2009 to 28.5.2009, had sworn an affidavit at the office of the counsel for the Management on 26.5.2009, and that, when Ext.P6 application was posted for evidence there was no appearance for the Management. It is relying on Ext.P4 medical certificate dated 25.5.2009, the Management is contending that there is sufficient cause for its non-appearance on 6.4.2009 and also for the belated filing of Ext.P6 application on 27.5.2009. A reading of Ext.P4 medical certificate dated 25.5.2009 would show that, the

then Proprietor of the firm was undergoing treatment for rheumatic complaints during the period 29.3.2009 to 24.5.2009. Merely for the reason that, he had sworn an affidavit at the office of the counsel for the Management on 26.5.2009, i.e., on the very next day of issuance of Ext.P4 medical certificate, the Labour Court ought not to have concluded that, if he was laid up as certified in Ext.P4 medical certificate, he could not have reached the Advocate's Office on that date in order to swear that affidavit.

12. As evident from Ext.P7 medical certificate, the then Proprietor of the firm was admitted in the Cardiology ICU of Amrita Institute of Medical Sciences and Research Centre, Kochi, on 28.5.2009, due to cardiac problems and discharged on 29.5.2009, which would indicate that the non-appearance of the Management on the day on which Ext.P6 application was posted for evidence was also for sufficient cause. When the Management had shown sufficient cause for for setting aside Ext.P5 ex parte award and also for extending the time limit prescribed under Rule 23 of the Rules for making Ext.P6 application, the Labour Court ought to have allowed that application, thereby setting aside

Ext.P5 ex parte award in I.D.No.27/2008 and ordering fresh disposal of that case, after permitting the Management to adduce evidence. However, in the facts and circumstances of the case, I deem it appropriate to order that, such fresh disposal of I.D.No.27/2008 shall be on condition that, the Management shall pay a sum of ₹5,000/- to the Workman towards cost, which the Management shall deposit before the Labour Court within a period of one month from the date of receipt of a certified copy of this Judgment.

13. Accordingly, Ext.P8 order passed by the Labour Court, Kollam, is set aside. In the result, I.A.No.127 of 2009 in I.D.No.27 of 2008 will stand allowed, thereby setting aside Ext.P5 ex-parte award, on the Management depositing a sum of ₹5,000/- before the Labour Court, Kollam, within a period of one month from the date of receipt of a certified copy of this Judgment, for payment to the Workman. Thereafter, the Labour Court shall proceed with I.D.No.27/2008 on merits, after affording the Management and Workman an opportunity to adduce evidence/further evidence.

14. Since the Industrial Dispute is of the year 2008, I

deem it appropriate to direct the Labour Court, Kollam to pass a final award in I.D.No.27/2008, as expeditiously as possible, at any rate, within a period of three months from the date of deposit of ₹5,000/- as aforesaid.

The writ petition is disposed of as above.

Sd/-
ANIL K.NARENDRA, JUDGE

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