

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20780 of 2012

Date of Decision: 06.10.2015

M/s L.N.M. Auto Industries Pvt. Ltd.

... Petitioner

Versus

Ravi Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.P. Bhandari, Advocate,
for the petitioner.

Mr. Deepak Sonak, Advocate,
for respondent No.1.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The Presiding Officer, Labour Court-II, Faridabad has allowed the workman's claim application under section 33-C (2) of the Industrial Disputes Act, 1947 ("the Act") computing money due against the management in a sum of Rs.1,06,977.26/- on account of non-payment of balance salary for the period October 01, 2002 to November 16, 2002 which was broken into 4 units of payment on different counts, i.e.; (1) wages from October 01, 2002 to November 16, 2002 which hadn't been paid and are claimed in a sum of Rs.3000/-; (2) Wages due for the period October 01, 2003 to February 28, 2005 @ Rs.2244/- per month representing dues arising out of breach of compromise arrived out on August 29, 2003 under section 12 (3) of the Act duly entered before the Labour-cum-Conciliation Officer, Ballabgarh Circle, Faridabad (Annexure P-6/Ex.W-6) in a sum of

Rs.35,904/- where it was agreed between the parties that the respondent-workman will join his duty from September 15, 2003 and his service will remain continuous. It was however agreed that wages for the break period induced by the management shall not be paid on the principle of "No-Work-No-Pay". There was a condition in the compromise in writing that the workman will join duty with the management at the place "where he was working". The compromise was entered with the workman by three sister concerns i.e. M/s L.N.M. Auto Ind. Pvt. Ltd., HSIDC 222D/59, Faridabad; LNM Export (P) Ltd. 222D/59 Faridabad and ORM Ind. 286/59, Faridabad. The two private limited companies and the third firm jointly agreed to the conditions of the compromise. Therefore, "where he was working" was obviously a fact well known to all three units of business and the workman and does not constitute an issue debatable. (3) Bonus @ 8.33% for 2001-02, 2002-03 equal to Rs.4000 was also computed in terms of money and; (4) balance of overtime calculated at single rate amounting to Rs.64,073.26/-. The total added up to Rs.1,06,977.26/-. This amount has been computed as due and payable by the managements.

2. Claim application No.37/2005 dated April 20, 2005 was filed against M/s L.N.M. Auto Industries Pvt. Ltd. alone. The dispute was settled in the presence of all three concerns during conciliation proceedings which is a binding settlement.

3. In the petition, it has been asserted that the claim application is filed against all three companies and all three companies filed written statements. This statement, however, does not appear to be correct on record since the impugned order at Annexure P-12 reveals that the action was

brought only against M/s L.N.M. Auto Industries Pvt. Ltd. and none other. If there were three applications and three separate orders none have been filed in the paper book. In any case it matters little as far as payment of money is concerned to the workman. The source of payment becomes meaningless and of no consequence when all three committed themselves to liability without specifying "where he was working".

4. When the application was fixed for hearing on November 06, 2009 before the labour court no one appeared on behalf of the management and it was proceeded against ex parte. The following order was passed on said date:-

"Present: Sh. Jawhar Lal AR for the workman

None for the management.

The case has been called several times since morning but none has appeared on behalf of the management.

It is already 2.00 PM Waited sufficiently. Hence, management is hereby proceeded against ex-parte.

Now, to come up on 18.11.09 for ex-parte evidence of workman.

Sd/- P.O. LC-II Fbd 6.11.09"

5. The case set up in the present petition is that the management's authorized representative Mr. R.C. Sharma passed away during the pendency of the proceedings the date of which is not disclosed. However, it is asserted that he looked after the case till February 28, 2007 and thereafter some proxy counsel had appeared and, therefore, they had no knowledge of the proceedings or of the fact that they had been proceeded ex parte in the year 2009. The Labour Court allowed the claim application by its order dated August 04, 2010 endorsed on January 05, 2011 with copies forwarded to the Deputy Labour Commissioner, Faridabad for information and

necessary action. The Labour Court has allowed the claim with interest @8% per annum since the evidence of the workman has remained unchallenged and unrebutted and, therefore, the relief has followed suit.

6. By way of this petition, the order proceeding ex parte dated November 06, 2009 and the impugned final order dated August 04, 2010 have been challenged.

7. The present petition was filed on October 15, 2012 after the petitioner was served a notice by the Labour Inspector, Circle-13, Faridabad in the process of implementation of the money-due order.

8. The petitioner has approached this Court directly without filing an application for recall of the order proceeding ex parte against it and the final order before the Presiding Officer, Labour Court-II, Faridabad in the first instance where the explanation for non-appearance could only have been gone into and tried on merits. In the absence of any application filed before the Labour Court for setting aside the ex parte proceedings and the ex parte order this Court would not think it prudent or advisable to entertain the plea regarding explanation of absence and sufficient cause for non-appearance for the first time in writ proceedings since this Court cannot take evidence to resolve disputed and controversial facts which have been controverted in the written statement filed by the workman before this Court. I would, therefore, not think it prudent or proper to entertain this petition any further and would dismiss it. There is no evidence on record to prove that the petitioner had or had not sufficient cause or a valid explanation for non-appearance on November 6, 2009. If the counsel passed away it was in 2007 and no prudent businessman is expected not to follow up the proceedings of

which has knowledge once having entered appearance and filed written statement to contest the case, to wait for unreasonable period of time of the next two years and meanwhile proceeded ex parte and the ex parte order pronounced. An ex parte order is as good as a contested order and it is open to implementation.

9. To reject the defence of the petitioner, this Court would apply the principles of non-traverse of the evidence produced by the workman in support of his claim.

10. For these reasons, I would dismiss this petition as not maintainable on the question of explanation for non-appearance of the management before the Labour Court in the proceedings under section 33-C (2) of the Act which have culminated in the impugned order defining the amount of money due and payable by the management/s to the claimant-respondent. The award amount be satisfied within two months of presentation of a certified copy of this order, failing which it will carry 12% simple interest per annum thereafter till realization. The rate of interest awarded by the labour court @ 8 % on the principal amount will be calculated till the aforestated two months, if not already paid. To remove any doubts the three sister concerns, though separate entities, will remain jointly and severally liable to pay the awarded amount plus interest as ordered.

11. In view of the above, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

06.10.2015
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