

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.17995 of 2015

Date of Decision: 28.08.2015

Vijay Goyal

... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum
Labour Court, Hisar & ors.

... Respondents

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

Present: Mr. Shalender Mohan, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.(Oral)

There was no disclaimer in the written statement filed by the petitioner before the Labour Court that he was not owner or manager of the respondent M/s Malik Swastik Industries India, Hisar or the workman its employee. If the employer-employee relationship is denied by the petitioner in this petition then such a defence plea was not taken by him in the preliminary objections to the written statement filed by the petitioner before the labour court nor in the body specifically. He did not object that he was not the employer and therefore the application itself was bad and could not be answered against him. After filing the written statement, the petitioner was proceeded against ex parte when he failed to appear in person or through an authorised representative and the ex parte order was passed under Section 33-C(2) of the Industrial Disputes Act, 1947 ('the Act') against which the present petition has been filed.

The petitioner had approached this Court earlier in CWP

No.24430 of 2013 against the ex parte order dated 21.9.2011 in which the

following order was passed.

“After arguing for some time, counsel for the petitioner does not press the present petition on the ground that he wishes to avail his alternate remedy by approaching the Labour Court which had passed the impugned order ex parte at this back.

Ordered accordingly.”

Thereafter, the petitioner filed an application bearing No.11 of 2014 for setting aside the ex parte order dated 21.9.2011 read with the relevant provisions of the Act. The said application was contested by the workman which has been dismissed as time barred vide order dated 31.10.2014 passed by the Presiding Officer, Labour Court, Hisar. The Court *a quo* has held that the petitioner failed to explain the inordinate delay of more than 2½ years in making the application and if sufficient cause was not shown to explain the delay to the satisfaction of the labour court then this Court would not interfere with the order in coming to the conclusion that it was not a fit case to entertain the application under Order 9 Rule 13 CPC for setting aside the order. In the circumstances, when the petitioner had received notice of the application under Section 33-C(2) of the Act, and filed a written statement and abstained from appearing without just cause before the Labour Court to contest the case on merits then he can claim no equity or sympathetic consideration. Labour courts follow such procedure as they think fit or are prescribed in rules.

If the petitioner is facing prosecution as a result of non-implementation of the order of the Labour Court then the present are not appropriate proceedings to set aside the prosecution to bail the petitioner

out of the trouble he invited for himself. This is not the scope of the present proceedings which are limited to review the order passed in the application under Order 9 Rule 13 of the CPC. It is argued by the learned counsel for the petitioner that the true owner of M/s Malik Swastik Industries India, Hisar and the petitioner are only friends and the petitioner had nothing to do with the business since he is a shop keeper in Hansi running his own business and only his friend could be held responsible to implement the order dated 21.9.2011. An ex parte order is as good as an order passed on merits till it is not set aside. The labour court has refused to allow the application for good and sufficient reason finding no plausible reason explaining wilful and deliberate abandonment of the proceedings after filing written statement contesting the case on merits and not refuting relationship of master and servant.

If the friends are now on crossroads they can settle the matter between themselves. There is also no material or evidence on record to go into the disputed question of fact or to settle the point and therefore, there is no occasion to go into it since the assertion is not in issue. This defence was not pleaded and proved at the trial under Section 33-C (2) of the Act which are in the nature of execution proceedings. This is a new story the petitioner is cooking up when faced with criminal prosecution for non-satisfaction of the order computing money due.

For the foregoing reasons, the writ petition has no merit and is ordered to stand dismissed.

28.08.2015
monika

(RAJIV NARAIN RAINA)
JUDGE