

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18431 of 2015

Date of Decision: 02.09.2015

The Industrial Manager/Owner CMP Lead-cum-
Sr. Manager and another

... Petitioners

Versus

Sant Lal and another

... Respondents

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

Present: Mr. D.K. Singal, Advocate,
for the petitioners.

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

RAJIV NARAIN RAINA, J.

1. This petition is directed against the award of the Presiding Officer, Labour Court-II, Gurgaon dated February 26, 2014 awarding reinstatement in service with continuity and full back wages calculated on the last drawn salary of Rs.15,708/- from the date the service of respondent-workman were terminated on November 01, 2008 till his reinstatement.

2. The management was ex parte before the Labour Court.

3. An application for setting aside the ex parte award and the order proceeding against the management ex parte passed on October 21, 2011 was filed before the Labour Court by M/s Reliance Communications Ltd. The plea taken was that the Company had shifted its office from Barakhamba Road to Reliance Centre, Maharaja Ranjit Singh Marg, New Delhi, 110002 in the year 2010 itself and due to which, respondent no.2 in the application, with whom the respondent-workman was employed was a

sister concern of M/s Reliance Communications Ltd. but had never received the summons from the Labour Court or so they said. It was prayed that the award be set aside and the matter decided on merits. The Labour Court dismissed the application by order dated July 20, 2015 for the reason that the application was filed beyond the period of 30 days from the date of publication of the award and the Labour Court had become *functus officio*. The award had become operational under section 17-A of the Industrial Disputes Act, 1947 (“the Act”) on the expiry of 30 days period prescribed within which time such an application was maintainable. The proceedings under section 10 of the Act are deemed to be concluded with the expiry of period of 30 days and the Court had no jurisdiction left to entertain any application after the expiry of the period prescribed. In reaching this conclusion, the Labour Court correctly relied upon the law laid down by the Supreme Court in **M/s Sangham Tape Company vs. Hans Raj**, (2005) 9 SCC 331: 2004 LLR 1098. It has been recorded in the order that the date of publication of the award is March 12, 2014.

4. However, despite the dismissal of the application for setting aside of the order, the case on merits have been examined by this Court only to understand whether the Labour Court was within its jurisdiction to proceed against the management ex parte within the trial proceedings.

5. Mr. Singal draws attention of this Court to the zimni orders dated May 12, 2011, August 11, 2011 and October 21, 2011 which deserve to be noticed and are reproduced:-

*“Present: Sh. Sudesh Sharma, A.R. for WM None for Mgt.
Authority letter filed on behalf of W.M. Let notice on Mgt.
through ordinary process, as well as through RC be issued*

for 11.8.2011 on filing of RC within three days.

Sd/-

(S.K. Khanduriya)

PO LC-II, 44

12.5.2011

“Present Sh. Sant Lal Workman

none for Mgt.

Notice to the Mgt. not issue by the clerk. He is warned to be careful in future let fresh notice on mgt. through R.C. be issued for 21.10.2011 on filing of R.C. with instructions.

Sir,

Summons were issued to Mgt. I & II on 24.08.11 through R.C.

Sd/-

PO/II 11.08.11

Present: Sh. Sant Lal Workman in person, None for the Management

Notice through registered AD on management was issued on 24.8.11. A clear period of 30 days have passed. Hence, presumption of due service is drawn. None has appeared on behalf of the management despite giving last call at 3.00 PM. Hence, this courts has no option, but to proceed the management against ex-parte.

Now, to come upon 2.1.2012 for filing claim statement and documents by the workman and thereafter, the date for ex-parte evidence of the workman shall be given.

Sd/-

P.O. LC-II, GGN

21.10.2011”

6. A few other facts may be noticed to understand the grievance of the management that they were proceeded against ex parte for the wrong reason. Reference No.357 of 2010 was registered in the Court of the Presiding Officer, Labour Court-II, Gurgaon on July 23, 2010. The award was passed on February 26, 2014. Two respondents were arrayed as parties

which are as follows:-

*“1. The Industrial Manager/Owner CMP Lead-Cum-Sr. Manager, First Floor, SCO-7, RISPL/RNPL Reliance Communication/Reliance ADAG, Sector-14, Gurgaon.
2. Business/Circle HR Manager, RISPL/RNPL Reliance Communication/Reliance ADAG, 5th Floor, Vijaya Building, 17, Bara Khamba Road, Connaught Place, New Delhi.”*

7. The management could be served at any of the two addresses, one at Gurgaon the other at Connaught Place, New Delhi. The respondent-workman was appointed as a Consultant with M/s Reliance Next Link Pvt. Ltd. (RNPL) (sister concern of Reliance Communication Ltd.) having its office at respondent-1 above. Subsequently, he was transferred from RNPL to Reliance Integrated Services Pvt. Ltd. (RISPL) another sister concern of Reliance Communication Ltd. Although appointed as a Consultant, the workman in his evidence proved that the nature of work was only that of a field technician/workman employed for company business in expanding the network by selling telephone connections to the consumers. He did not perform any managerial functions nor had the power to sanction leave, advance pay, loan or had the authority to appoint workers or issue charge-sheets etc to anyone. His services were terminated without following the procedure in section 25-F of the Act. He claims reinstatement to service with continuity and full back wages and other consequential benefits.

8. The Labour Court in the ex parte proceedings that led to the award found sufficient evidence by way of affidavits and documents to conclusively suggest that the workman did not exercise any administrative control or discharge any supervisory functions of a managerial nature. His status was that of a workman within the meaning of section 2(s) of the Act.

9. To return to the zimni orders proceeding ex parte against the petitioners-managements since that is the moot question to be decided in this case, whether to confirm the order proceeding ex parte or to re-open the proceedings before the Labour Court for a decision on merits. It cannot be disputed that the Labour Court made effort twice to serve the management through Registered AD post, the last of which summons were issued to managements-1 & 2 on August 11, 2011 for appearance on October 21, 2011. The note of the office records that summons were issued on August 24, 2011 through RC and a clear period of 30 days provided for service of summons. In absence of appearance of the management or its representative before the Labour Court on October 21, 2011 the Court after waiting up to 3 PM on last call proceeded ex parte against the management by drawing a presumption of due service on the management. The provisions of service of summons is prescribed in **Rule 18** of the Industrial Disputes (Central) Rules, 1957 which reads as follows:-

“[18. Service of summons or notice.—Subject to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, National Tribunal or an Arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall be sent again under certificate of posting.]”

10. It is the case of the petitioner in the present petition that the office of the management was vacated (before November 01, 2011). Reliance is placed on a decision of the learned Additional District Judge-08, (Central), Tis Hazari Courts, Delhi in Suit No.235/14 (Old No.137/2008)

brought for possession and recovery of damages and mesne profits filed by Mrs. Kailash Chawla and another, landlords, against tenant M/s Reliance Infocomm Ltd., 5th Floor, Vijay Building, 17 Barakhamba Road, New Delhi-defendant, seeking possession by way of eviction of the tenant company. The suit was decreed in favour of the plaintiffs for mesne profits and damages with costs. Mesne profits were ordered to be paid @Rs.110/- per sq yds per month for the period February 02, 2008 to October 01, 2010 with simple interest @ 9% per annum from the date of the judgment till realization of the decretal amount. The decree reads as follows:-

“This suit/application is coming before me in the presence of Sh. Gaurav Jain and Rohit Jain Ld. Counsel for defendant, the suit is decreed in favour of the plaintiffs for the relief of mesne profits/damages with cost of the suit. Defendant is directed to pay the plaintiffs mesne profits/damages at the rate of Rs.110/- per month for the period 02-02-2008 to 01-10-2010 with simple interest at the rate of 9% per annum from the date of this judgment till realization of decretal amount. The amount of security deposit and the amounts if any paid by the defendant to the plaintiffs as use and occupation charges during the aforesaid period shall be adjusted from the principle amount of mesne profit/damages.”

11. There is, however, nothing placed on record of this case to show that possession of the property has been regained, since the decree for possession had not been passed and the suit was only been decreed partially for recovery of damages and mesne profits while the suit remains pending for decree of possession to follow. This practice of splitting up reliefs is supported by Delhi courts since the Transfer of Property Act, 1882 applies to Delhi unlike in the jurisdiction of this Court where the TPA was never

extended to erstwhile Punjab.

12. The pleadings in this petition presently deserve to be reproduced to understand the conduct of the petitioners in abandoning the litigation and going ex parte:-

“The said notices issued on New Delhi address could not be received by the petitioner on the said address as the petitioner vacated the said premises before 01.11.2011 and to this effect letter dated 01.11.2010 was written to the Assistant Executive Engineer, New Delhi Municipal Committee Electrical Meter commercial Department, New Delhi requesting therein to terminate the connected load/meter and refund security deposit of Rs.1,56,000/-. The said letter was duly received by the said office on 02.11.2010. Even, the landlord of the said building initiated the legal proceedings for vacation of the said premises which was decided by the court vide judgment and decree dated 29.11.2011 passed by the court of Sh. Ravinder Singh-I, Additional, District Judge,-08, (Central) Tis Hazari Court, Delhi. Over a glance of para no. I of the said judgment and decree would also substantiate the said factual position to the effect that the petitioners vacated (sic. vacated) the premises i.e. 5th Floor, Vijay Building, 17, Barakhamba Road, New Delhi on 01.10.2010. Thus, drawing of presumption by the ld. Labour Court presuming the service of the summon served upon to the petitioners is erroneous and pressure in the given facts and circumstances, of the present case.”

13. The pleadings in the petition do not match the decree reproduced above. A false impression has been given that the petitioners vacated the premises before November 01, 2011 and thus they were not in possession of the premises at Barakhamba Road on October 01, 2010. The decree did not grant possession to the plaintiffs and no other evidence has been placed on the record of this case that de hors the decree, possession was still handed over to the landlords by the petitioning companies. The

petitioners appear to be playing ducks and drakes with the Court trying to wriggle out of the ex parte award to defeat the rights of the workman under it albeit ex parte. Moreover, August 24, 2011, when the summons were issued by registered post AD for the date fixed, but that date is well before the date attributed by the petitioners when they allege that they vacated the premises on October 01, 2010. Even if it is assumed that November 01, 2011 is an incorrect date and should be read as November 01, 2010 even then court process issued on August 24, 2011 as recorded by the Registry of the Labour Court will be presumed to have been served on the addressee as there was sufficient time between August 24, 2011 and October 01, 2010 or November 01, 2010 or November 01, 2011, as the case may be, for the presumption of due service to arise. There is no clarity on file. There is thus a clear presumption of due service upon the petitioner sent by court process on October 21, 2011 at the address of the petitioners. In the confusion created in the pleadings in para.11 of the petition the petitioners appear to hide more than they wish to disclose. There is no proof placed on record of the exact date of vacation of the premises at any time during the relevant period between August 24, 2011 and October 21, 2011 or as attributed that premises were vacated before November 1, 2011 and thus the story that the summons through registered post was not received by the petitioners at the admitted address has been made up to obtain relief. It is pleaded in para. 11 [pg.13] that the company [Reliance Communications Ltd.] wrote letter dated “November 1, 2010” the Assistant Engineer, NSMC, New Delhi to disconnect load connection [in the name of M/S Reliance Infocomm Ltd, (old name)] that the premises were vacated and meter installed on 5th Floor,

Vijay Building, 17, Barakhamba Road, New Delhi was requested to be disconnected but an electricity and water bill dated February 12, 2011 is placed at pg. 76 of the paper-book without explaining transaction and furnishing the date of actual disconnection and leaving the premises for good. Everything is left vague in the petition. A false stand has been taken even before this Court which does not match the averments made in the application for setting aside the ex parte order dated July 02, 2014 (P-28) where the following averments are made:-

“1. That the present application is filed on behalf of the respondent.

2. That the respondent has received summons from the court of Sh. Ajay Prashar POLC-2, Gurgaon. It came to the knowledge of the respondent that this Hon'ble Court has passed an ex-parte order of the Industrial Dispute Act, 1947 on 21.10.2011/26.02.2014.

3. That respondent no. 2 has shifted its office from Barakhamba road to Reliance Centre, Maharaja Ranjit Singh Marg, New Delhi 110002 in 2010 itself and due to which the respondent no. 2 never received the summons from the Hon'ble Court.

4. That the respondent has never received any notice/summons from this Hon'ble Court to appear and defend their case on any date and due to non-receipt of summons from this Hon'ble Court the respondent was unable to appear and defend their case before this Hon'ble Court.

5. That non appearance of the respondent is neither intentional nor deliberate but rather because of non-receipt of summons from this Hon'ble Court.

6. That no prejudice would be caused to the plaintiff, in case the ex-parte orders passed against the respondent is set-aside rather it would lead to proper adjudication of the present matter.

7. That great prejudice would be caused to the respondent in case the ex-parte orders are not set-aside.”

14. The averments made in this petition are therefore clearly an afterthought.

15. Consequently, the petition is found frivolous and the same deserves to be dismissed with costs and the vainglorious effort to wriggle out of the ex parte award without sufficient cause of non-appearance shown for far too long is to be strongly deprecated which are best expressed in the words of the Supreme Court spoken in **Dalip Singh vs. State of Uttar Pradesh and others**, (2010) 2 SCC 114 to the following effect:-

“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

16. For the reasons recorded above, this frivolous petition is

dismissed with compensatory costs quantified as Rs. 50,000/- to be paid to the respondent-workman by the petitioner before the labour court to defray the expenses of litigation he was compelled to face in the court below for 7 long years in search of justice which must have been very tough on him and would have considerably drained out his pocket.

17. A copy of this order be sent to respondent No.1-workman and the Labour Court for information, record and necessary action.

(RAJIV NARAIN RAINA)
JUDGE

02.09.2015
manju