

CWP No.24272 of 2013

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

**CWP No.24272 of 2013
Date of decision:15.05.2015**

Satbir Singh

...Petitioner

Versus

M/s Machino Plastic Ltd. and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashwani Bakshi, Advocate,
for the petitioner.

Mr. Rajesh Garg, Senior Advocate, with
Ms. Namrata Shergill, Advocate, for the respondent.

Rakesh Kumar Jain, J.

The petitioner has challenged the orders dated 24.03.2011 and dated 22.07.2013 passed by the Industrial Tribunal-cum-Labour Court-I, Gurgaon (hereinafter referred to as the "Labour Court").

In short, the dispute relating to termination of the services of the petitioner was referred to respondent no.2. The petitioner put in appearance and after completion of the pleadings, the issues were framed on 30.05.2002. On 24.03.2011, the case was fixed for examination of the management witness but neither the petitioner nor his authorized representative was present, therefore, the Labour Court passed the order

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dated 24.03.2011 observing that:-

“Present: None for workman.
Sh. G.C.Walesha AR for Mgt.

Case called several times since morning but none for workman has come present. Waited sufficiently. It is already 3.00 P.M. No further wait is justified. It appears that the workman is not interested to pursue his case. So, the reference made for the workman is ordered to be answered as ‘**NO AWARD**’ file be consigned.”

The petitioner, thereafter, filed application for setting aside the aforesaid order but the application was contested by respondent no.1. Respondent No.2 dismissed the application vide order dated 22.07.2013 on the ground that the Labour Court does not have the jurisdiction to review its order while referring to a decision of the Supreme Court in the case of **Kapra Mazoor Ekta Union v. Management of M/s. Birla Cotton Spinning and Weaving Mills Ltd. and others**, 2005(2) RSJ 653.

Counsel for the petitioner has argued that respondent no.2 should have decided the reference one way or the other instead of disposing it of as “No Award” and has relied upon a Division Bench of this Court in the case of **K.K.Rattan v. Presiding Officer, Labour Court, U.T., Chandigarh and another**, 1993(1) RSJ 423 and a decision of the Supreme Court in the case of **Grindlays Bank Ltd. v. The Central Government Industrial Tribunal and others**, AIR 1981 Supreme Court 606.

In **K.K.Rattan's case (supra)**, the reference was dismissed by the Labour Court on the ground of “non-prosecution”. In this case, it has been held that the Labour Court is bound to proceed and decide the matter on merits even if the applicant absents himself as a dispute referred under section 10 of the Industrial Disputes Act, 1947 to the Labour Court cannot be equated with a civil suit filed in a civil court which can be dismissed for non-prosecution as the Tribunal gets the jurisdiction to adjudicate an industrial dispute on a reference made to it under Section 10 of the Industrial Dispute Act, 1947 and the duty required to be performed by it is incorporated in Section 15 of the Act as per which it has to answer a reference on merits.

In **Grindlays Bank Ltd.'s (supra)**, it was held that where a party is prevented from appearing at the hearing due to a sufficient cause and is faced with an ex-parte award, it is as if the party is visited with an award without a notice of the proceedings. An award without notice to a party is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex-parte award and to direct the matter to be heard afresh.

The judgments relied upon by learned counsel for the petitioner are on both shades of the decision of the Labour Court against the workman and the management wherein the reference made for and on behalf of the workman, dismissed in default, has not been accepted and reference decided against the management ex-parte has also not been accepted.

Insofar as the judgment of the Supreme Court in **Kapra**

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Mazoor Ekta Union's case (supra), relied upon by the Labour Court while dismissing the application filed by the petitioner for setting aside the order dated 24.03.2011, is concerned, in that case, the Industrial Tribunal had recalled its award of June 12, 1987 and framed an additional issue to be tried by the Tribunal. The Management of M/s Birla Cotton Spinning and Weaving Mills Ltd. challenged that order on the ground that the award dated 12.06.1987 had effectively terminated the industrial dispute referred to the Tribunal by the appropriate Government on December 13, 1982. The High Court quashed the order dated 12.06.1987 against which the Kapra Mazoor Ekta Union preferred Special Leave Petition before the Supreme Court. The Supreme Court dealt with two questions and it took up second question to decide first which was as to “whether the Tribunal was *functus officio* having earlier made an award which was published by the appropriate Government. It was held that as per Section 17-A(1) of the Act, an award becomes enforceable from the date of publication under Section 17 of the Act. In the said case, the award would have become enforceable w.e.f. 09.09.1987, but the application for recalling the award was made on 07.09.1987 i.e. 2 days before the award would have become enforceable in terms of Section 17-A(1) of the Act. It was held that the order of recall passed by the Tribunal on 19.02.1990 cannot be assailed on the ground that the Tribunal had become *functus officio*.

The another question was as to whether the Tribunal had the power to recall its earlier award dated 12.06.1987. The Supreme Court has held that the review cannot be allowed until and unless the power of review

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is expressly provided under the statute. It also decided that there is a difference between the “procedural review” and the “review on merits”. The procedural review can be allowed but the review on merits cannot be allowed and the review on merits was held to be one which goes to the root of the matter and invalidates the proceeding itself.

After hearing learned counsel for the parties and perusing the record, I am of the considered opinion that the impugned order passed by the Labour Court is erroneous as the judgment relied upon by the Labour Court in **Kapra Mazoor Ekta Union's case (supra)** is not at all applicable.

As a matter of fact, the case of the petitioner was dismissed in default on account of his non-appearance or his authorized representative. On 24.03.2011, the cross-examination of the Inquiry Officer, who was appearing as the management witness, was not conducted because according to the petitioner, he was not informed by his authorized representative about the requirement of his presence otherwise he would have appeared. Moreover, the decision of “No Award” was not published as it was not sent to the Deputy Labour Commissioner for issuance of notification for that parties, therefore, the Labour Court had not become *functus officio*. His application for setting aside the order dated 24.03.2011 has been dismissed on the ground that the workman failed to lead evidence and it was ordered to be closed on 18.02.2010, but on his application moved on 11.03.2010, he was allowed one more opportunity to lead his evidence but again he failed to lead his evidence on the next date and his evidence was closed by order of the Court. This may be the reason for closing the evidence of the

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petitioner but when the management was leading its evidence and the Inquiry Officer was to be cross-examined on 24.03.2011, the petitioner or his authorized representative could not appear and his application for recalling has been dismissed on the ground that it would tantamount to review of the order which is not permissible.

The order passed by the Labour Court dated 22.07.2013 cannot be sustained for the reasons recorded here-in-above because the Court still has the power to recall its order which was allegedly passed on the ground of non-appearance and it would not fall within the definition of decision on merits for which the petitioner cannot ask for.

Thus, in view of the aforesaid discussion, the present writ petition is allowed and the order dated 22.07.2013 is hereby set aside. The case is remanded back to the Labour Court for deciding the application of the petitioner for setting aside the order dated 24.03.2011 on merits. The parties are directed to appear before the Labour Court on 15.07.2015.

May 15, 2015
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(Rakesh Kumar Jain)
Judge