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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 28th September, 2015

+ **W.P.(C) 302/2011**

SHIV RAM & ANR. Petitioners

Through: Mr.K.Venkataraman, Advocate

versus

M/S POPPY CHILDREN WEAR Respondent

Through: Mr.B.K.Singh and Mr.P.S.Bhullar,
Advocates

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition is to the order dated 09.08.2010 passed by the Presiding Officer, Labour Court XIX, Karkardooma, Delhi in Misc.No. 06/08 in LIR No. 64/2008 vide which the application moved by the petitioners for setting aside ex-parte award was dismissed.

2. Before coming to the challenge made to the impugned order, it will be in fitness of things to have a brief factual matrix of the case:-

3. Vide reference dated 05.10.2001 the Government of National Capital Territory of Delhi referred the dispute between the Management of M/s Poppy Children Wear and its workmen in the following terms:

"Whether the services of Shri Shiv Ram, S/o Shri Ram Prasad, Shri Arvind, S/o Ram Pal and Shri Raj Kumar, S/o Shri Avtar Chandra have been terminated illegally and/or unjustifiably by the Management, and if so, to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/Govt. notifications and to what other relief are they entitled and what directions are necessary in this respect?"

4. After the reference was received, notice was sent to the workmen. They filed a claim stating therein that their services were illegally terminated by the Management on

11.01.2001 in violation of Section 25F and 25G of the Industrial Disputes Act, 1947 (hereinafter referred as “the Act”). The claim of the workmen was contested by the Management on the ground that the workmen abruptly started absenting themselves from duties w.e.f 11.01.2001. The Management also expressed their willingness to take the workmen on duty without prejudice to their rights. Issues were framed on 28.11.2002. Out of the three workmen, two workmen namely Arvind and Shiv Ram filed their affidavits but did not appear in the court for cross-examination. No evidence was also led by the Management. Under the circumstances, vide award dated 27.08.2007, the Labour Court came to the conclusion that the Management failed to establish that the workmen had started absenting themselves from duties of their own and at the same time the workmen failed to prove that their services had been terminated illegally. As such, no relief can be granted to the workmen.

5. Thereafter, an application dated 26.03.2008 was moved by two claimants i.e. the petitioners herein for setting aside the award *inter alia* on the allegations that one of the workmen namely Shiv Ram had gone to his native village due to unemployment. He suddenly fell ill from 13.05.2007 and was advised complete bed rest for a week, as such, could not attend his case on 16.05.2007. He had given the message to his co-workman Arvind and requested him to inform regarding the future date so that he can attend the matter. Workman Arvind lost his diary, with the result, he could not appear in the Court and despite efforts, the counsel also could not be contacted. Therefore, both the claimants could not appear on 16.05.2007, 11.08.2007 and 17.08.2007. In the month of March, 2008 enquiries revealed that the award has been passed against the workmen for not leading any evidence. It was prayed that the non-appearance of the workmen was neither intentional nor wilful and in case the order in question is not set aside and they are not allowed to contest the matter on merits, they shall suffer an irreparable loss and injury.

6. Vide impugned order dated 09.08.2010, the application was dismissed by the learned Labour Court on the ground that the claimants have failed to give any sufficient explanation for their non-appearance in the Court which led to the passing of the award. Moreover, no application for condonation of delay in filing the application was moved, as such, the application being barred by limitation and without any merit, was dismissed.

7. The impugned order is under challenge in this writ petition.

8. Learned counsel for the petitioner submits that although the application in hand was moved on 26.03.2008 but it is wrongly observed in the order that the application is dated 16.12.2009. The claimants were prevented by sufficient cause from not appearing in the Court which resulted in the passing of the impugned award. The petitioners be given an opportunity to prove their case. At the most they can be put to terms that they be not granted backwages.

9. On the other hand, learned counsel for the respondent submits that the reference was made in the year 2001. It is the case of the respondent that the petitioners were not terminated rather they themselves abandoned their duties. Even during the pendency of the industrial dispute both the petitioners were reinstated, however, one of the petitioners Shiv Ram again abandoned his duties which shows that he is not interested in working with the respondent. Learned counsel further submits that no medical certificates were filed by petitioner No.1 before the Labour Court. In this Court petitioner No.1 Shiv Ram has filed medical certificates which are false as although as per the version of Shiv Ram he had fallen ill in the month of May, 2007 but the medical certificates are from 01.04.2007 till 29.06.2007. Even otherwise, nothing has been brought on record to show as to what prevented him thereafter from enquiring about the fate of the case from his counsel or from the Court. The conduct of the petitioners itself is reflective of the fact that they are highly negligent in pursuing the matter. Reference was also made to the order sheet dated 15.09.2014 for submitting that the counsel for the petitioner submitted before the Court that Shiv Ram was suffering from Tuberculosis and, therefore, he sought time to produce the relevant documents of the hospital from where he may be taking treatment but till date no such document has been filed. Lastly, it is submitted that in case the application is allowed and the matter is remitted back then the respondent will be seriously prejudiced as reference is pertaining to the year 2001. Due to lapse of such a long time now the respondent is not even having the relevant record to substantiate his allegations. Under the circumstances, it is submitted that there is no merit in the petition and same be dismissed.

10. Undisputedly, the award was passed on 27.08.2007. The application for setting aside the award is dated 26.03.2008 (though wrongly mentioned as 16.12.2009 in the impugned order). The application was not accompanied by any application for

condonation of delay in filing the application. The core question for determination is whether the petitioners have been able to assign sufficient cause for their non-appearance before the Labour Court which led to the passing of the impugned award dated 27.08.2007. Hon'ble Supreme Court in case of **Basawaraj & Anr v. Special Land Acquisition Officer**, (2013) 14 SCC 81, while construing the expression "sufficient cause" and examining the intent of statute of limitation, has held as under:-

*"9. Sufficient cause is the cause for which Defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: **Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee and Ors.** AIR 1964 SC 1336; **Lala Matadin v. A. Narayanan**, AIR 1970 SC 1953; **Parimal v. Veena @ Bharti**, AIR 2011 SC 1150; and **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**, AIR 2012 SC 1629.)*

*10. In **Arjun Singh v. Mohindra Kumar**, AIR 1964 SC 993 this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".*

*11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only **so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned**, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: **Madanlal v. Shyamlal**, AIR 2002 SC 100; and **Ram Nath Sao @ Ram***

Nath Sahu and Ors. v. Gobardhan Sao and Ors., AIR 2002 SC 1201.)

12. *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

13. *The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 226:*

"605. Policy of the Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a Defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

(See: Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510; Rajendar Singh and Ors. v. Santa Singh and Ors., AIR 1973 SC 2537; and Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project.)"

11. It is, therefore, to be seen whether the petitioners were able to assign sufficient cause leading to their non-appearance before the Labour Court.

12. It was alleged in the application that petitioner no.1 namely Shiv Ram had gone to his native village as he had been permanently residing in his native village due to unemployment. He suddenly fell ill on 13.05.2007 and was advised complete bed rest for a week, as such, he could not attend the case on 16.05.2007. He had requested petitioner no.2 Arvind to inform him regarding the further dates. Arvind had lost his diary and,

therefore, could not appear. He tried to contact his counsel on telephone and even after visiting Tis Hazari Courts he could not find him therefore he could not appear before the Court. Before the Labour Court, no documentary evidence was filed by the petitioner no.1 in support of the submission that he had fallen ill on 13.05.2007 and was advised complete bed rest for a week. In the writ petition it is alleged that the petitioner no.1 had fallen ill in his native village in the month of May, 2007 and was advised complete bed rest for a period of approximately 90 days from 01.04.2007 till 29.06.2007. In support of his submissions, he placed on record medical prescriptions certifying his illness. The medical certificates does not assist the petitioner as according to his own version if he had fallen ill only on 13.05.2007 then where was the occasion for giving the medical certificate from 01.04.2007. Moreover, in the application before the Trial Court, it was alleged that he was advised bed rest for a week but before this Court it is alleged that the bed rest was advised till 29.06.2007. The medical certificates placed on record seems to have been procured by the petitioner in order to assign sufficient cause for his non-appearance before the Labour Court. However, the same does not assist him in any manner as the medical certificates are contrary to the averments made in the application before the Labour Court and in this petition. Moreover, before this Court a plea was taken on 15.09.2014 that petitioner no.1 was suffering from Tuberculosis and the counsel sought time to file documents of the hospital from which the petitioner was under treatment. Till date no such documents have been filed by the petitioner. Learned Trial Court was right in observing that before the Labour Court no medical certificate or prescription was filed by the applicant in support of the contention that he had fallen sick and was advised complete bed rest by the doctor.

13. Even assuming that as per the medical certificate petitioner no.1 was advised bed rest till 29.06.2007, absolutely no explanation is forthcoming as to what prevented him from enquiring about the proceedings of the case till March, 2008 when according to him on enquiry it was revealed that the award has been passed against him. As such, petitioner no.1 has failed to assign sufficient cause for his non-appearance before the Labour Court on number of dates which led to passing of impugned award.

14. As regards petitioner no.2 Arvind is concerned, a plea was taken that he was re-employed by the Management and as such, serious efforts may not have been made by

him in finding out the status of the litigation. However, an affidavit has been filed by petitioner no.2 Arvind stating therein that he had engaged Mr.K.V.Srivastava, Advocate to represent the industrial dispute but he failed to appear which resulted in passing of the ex-parte award. He further alleged that he had gone to Tis Hazari Courts several times but could not find the whereabouts of the counsel due to renovation work. Absolutely no explanation is forthcoming as to why the petitioners could not make any enquiry from the Court itself regarding the proceedings of the case. Under the circumstances, none of the petitioners have been able to assign “any cause” much less “sufficient cause” which prevented them from appearing before the Court which resulted in passing of the impugned award. The expression ‘sufficient cause’ cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5 of the Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such ‘sufficient cause’ stated in the petition and as such, no interference in the impugned order is called for.

15. There is also force in the submission of learned counsel for the respondent that the reference was made long back and, therefore, a legal right has accrued to the opposite party by lapse of time and in case the application is allowed, the respondent will be seriously prejudiced as due to long lapse of time even the record is not available.

16. In the result, petition being bereft of merits is dismissed.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 28, 2015
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