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

% *Judgment delivered on: 19th February, 2015*

+ **CONT.CAS (C) No. 667/2011**

SYLVANIA & LAXMAN EMPLOYEES WELFARE
UNION

..... Petitioner

Represented by: Mr. N.S. Dalal and Mr. Amit
Rana, Advocates.

Versus

SHYAMA AGGARWAL & ORS.

..... Respondents

Represented by: Mr. Harish Malhotra, Senior
Advocate with Dr. Saif
Mahmood and Mr. Vivek
Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, the petitioner Union seeks directions to initiate contempt proceedings against the respondents for not complying with the orders dated 30.03.2011 and 02.05.2011 passed in LPA No. 773/2010 and Review Petition No. 249/2011 respectively by the Division Bench of this Court.

2. Mr. N.S. Dalal, learned counsel appearing on behalf of the petitioner Union submitted that on account of illegal closure of the company, the petitioner Union had to initiate the proceedings, pursuant to which a recovery certificate was issued by the Authorities. During

this period, some of the workers entered into an Agreement with the Management on 16.08.1997. Since the said Agreement was not acceptable to the petitioner Union, therefore, another Agreement dated 28.08.1999 was entered into between the Management and the petitioner Union. During the pendency of the matter, with the intervention of this Court, the matter was settled and it was ordered that the respondents shall pay the principal amount and also the interest from 16.12.1997 to 31.08.1999. The respective undertakings, as directed by this Court vide its orders dated 19.08.2002 and 09.09.2002, were also filed.

3. Since the aforesaid orders and Agreements were not abided by the respondents, therefore, three contempt petitions, i.e., CONT. CAS (C) Nos.219/2004, 221/2004 and 409/2004 were filed before this Court. Latter was filed by the petitioner Union. The said contempt petitions were disposed of by this Court vide order dated 03.03.2010, whereby held that interests shall be paid only to the workers who had filed the affidavits prior to 15.03.1998. Thus, the relief qua the petitioner Union was declined by this Court.

4. Being aggrieved, the petitioner Union filed LPA No.773/2010, which was disposed of by the Division Bench of this Court vide order dated 30.03.2011. The relevant portion of the same reads as under:-

“9. A perusal of the aforesaid orders expositis that various aspects including monthly wages, bonus, gratuity, compensation, notice pay etc., were discussed and examined and were part of the

broad parameters of settlement worked out as recorded in the order dated 19th August, 2002. As the workers had not been paid, question of interest on dues was also relevant. Under the heading “settlement as per law”, it was recorded that there was no provision for payment of interest but under the heading “settlement 16th August, 1997 and 26th August, 1999”, it was recorded that interest would be paid upto 31st August, 1999 to workers who had submitted their affidavits prior to 15th March, 1998 but no interest would be payable after 31st August, 1999. Under the heading “desired”, it was recorded that interest would be as per 1997 settlement. This obviously means that the parties felt and had agreed that interest should be paid in terms of 1997 settlement, i.e., @ 12% per annum upto 31st August, 1999. As per the appellant, interest is payable to all employees whether or not they had furnished their affidavits prior to 15th March, 1998 but as per the respondent, interest is payable to workers who had submitted affidavits upto 15th March, 1998. This is a disputed question but it finds answer in the subsequent underlined portion of the order dated 19th August, 2002, which is quoted above. The said paragraph clearly states that interest on dues @ 12% per annum as per 1997 settlement and as per the modified settlement shall be paid by the management to the 200 workers of the appellant union. The last sentence in the first paragraph quoted above is merely explanatory or clarificatory in nature and states that even as per the 1997 settlement, workers who had submitted affidavits prior to 15th March, 1998 would be paid interest. Even if there was any doubt or ambiguity, the said gets clarified in the second paragraph quoted above. The said paragraph relates to the workers union i.e. the present appellant, who had filed Writ Petition (Civil) No.

6755/2001, but had not submitted affidavits in terms of 1997 settlement or 1999 settlement. They too were given right to file affidavits with the management and accordingly would be paid interest at the same rate as was given to other workers who had filed affidavits. Accordingly, the last sentence in second paragraph records interest was payable under the settlement and modified settlement from 16th December, 1997 to 31st August, 1999. The words “The interest payable under the settlement and modified settlement is from 16th December, 1997 to 31st August, 1997”, are clearly illustrative of the intention to give benefit to the workers of the appellant union. Obviously, the Court did not want to create any artificial discrimination and distinction between the workers who had entered into a settlement earlier in 1997/1999 and those who had entered into the settlement later as a result of efforts of the Court. The two paragraphs have to be read together to find out the intention and purport behind the wordings. In case, interest was not to be paid to the workers who had not filed affidavits till 15th March, 1998, there was no need to make the aforesaid observations.

10. As noted above, the last sentence in the first paragraph quoted above is only to elucidate the existing position and not to deny benefit of interest to workers who had not submitted affidavits prior to 15th March, 1998. The said sentence cannot be read in isolation as to negate the right of the workers to get benefit under the modified settlement agreed before the Court, terms of which as were understood clearly mean that interest would be paid from 16th December, 1997 to 31st August, 1999 to the workers irrespective of

whether they had filed their affidavits prior to 15th March, 1998.”

5. Mr. Dalal submitted that the Division Bench of this Court had clarified that interest will be paid to all the persons, who had filed their affidavits irrespective of whether they had filed the same prior to 15.03.1998 or not. Thus, it is clear from the said order that the interest will be paid to all the workers.

6. Thereafter, the respondents filed a petition for review bearing Review Petition No.249/2011, which was disposed of vide order dated 02.05.2011, wherein the Division Bench of this Court held that:-

“We may hasten to note that we have reproduced the said paragraphs as they speak for themselves. If affidavits have been filed before and after in terms of the said orders, the workmen shall be entitled to the interest.

With the aforesaid clarification, as agreed to, the application for review stands disposed of.”

7. Mr. Dalal further submitted that if the affidavits had been filed before and after in terms of the orders dated 19.08.2002 and 09.09.2002 passed by this Court in WP(C) No.3375/1996, the workmen shall be entitled to the interest, thus, it is clear that the interest is to be paid to all the workmen, who had filed their affidavits in terms of the aforesaid orders of this Court.

8. On the other hand, Mr. Harish Malhotra, learned senior counsel appearing on behalf of the respondents submitted that the dispute

regarding dues of the workmen was finally settled between the company and its workers by way of two settlements entered into in the year 1997 and 1999 respectively. The terms of the said settlements were finally recorded by this Court vide consent orders dated 19.08.2002 and 09.09.2002 passed in WP(C) No. 3375/1996. Besides, the interest at the rate of 12% *per annum* was also made payable to some workmen of the following two categories:-

- (i) Interest upto 31.08.1999 was payable to all workmen, who submitted their affidavits prior to 15.03.1998; and
- (ii) In addition to above, interest upto 31.08.1999 was payable to 200 workmen, members of the petitioner Union in WP(C) No. 6755/2011 and were directed to file their affidavits.

No other workman was to be paid any interest.

9. Mr. Malhotra submitted that the petitioner Union categorically admitted that its members did not submit their affidavits prior to 15.03.1998 and vide judgment dated 30.03.2011 passed in LPA No.773/2010; the Division Bench of this Court partly allowed the appeal. Consequently, the respondents preferred a Review Petition No.249/2011. While disposing of the same vide order dated 02.05.2011, the Division Bench of this Court made certain clarifications, which reads as under:-

“ Members of the said union shall be entitled to the benefit of settlement that has been recorded

by the learned Single Judge in WP(C) No.1624/2001, particularly keeping in view the following paragraph from the order dated 19.08.2002 and 09.09.2002. Relevant portion of the order dated 19.8.2002 reads as under:

“CWP No. 6755/2001 is a writ petition which, according to the Petitioner is represented by a separate union which is representing about 200 those workers who have not filed their affidavits in terms of the 1997 settlement or 1999 settlement. They shall file their affidavits before the management and they shall also be paid interest on the same rate as has been given to other workers who have earlier filed their affidavits. The interest payable under the settlement and modified settlement is from 16.12.1997 to 31.08.1999.”

In the order dated 9.9.2002, it has been stated thus:

“Another undertaking has been filed by Suresh Shukla S/o R.R. Shukla, General Secretary, Sylvania and Laxman Employees Welfare Union. Suresh Shukla is present in court. The undertaking of Suresh Shukla is accepted by this Court.

Yet another undertaking has been given by Surender Swaroop, General Secretary of Sylvania Laxman Karamchari Sangh, Petitioner in CWP No.6755/2001. Surender Swaroop is present in Court. The undertaking is accepted. Second line on page 2 ‘except in view the regd. Office of the Union at Najafgarh Road’ is deleted from the said undertaking as accepted by the Court with the above modification.

The District Collector is directed to immediately remove the seal of the premises and hand-over the property to the management forthwith.

This order in no way deals with the strength of the unions. It will be open for the workers unions to move appropriate machinery under the industrial law or appropriate forum for getting their disputes, in relation to their recognition or strength, if any, redressed.

The workers who have got their benefits under the settlements, shall not be entitled to get benefit under the modified settlement, as agreed before this Court.

All the worker unions undertake to withdraw all the cases/proceedings pending in court/tribunals against the company.

In CWP No. 1624/2001 certain interim orders have been passed and pursuant to that a sum of Rs.47 lakhs was deposited by the management in this Court. Counsel for 37 workers have not been paid salary from April, 1995 till 31st March, 1996. The management shall make payment of the salary due to said 37 lakhs which has been deposited by the management in this Court.

All the parties shall be bound by the undertaking given to the Court in view of the matter having been settled amicably between the parties. In terms of the undertakings filed by the respective parties, all the interim orders in CWP No.6755/2001, CWP No. 3375/96 and CWP No.1624/2001 stand vacated. All the pending applications stand disposed of in terms of settlement arrived between the parties.

Petition stands disposed of.

We may hasten to note that we have reproduced the said paragraphs as they speak for themselves. If affidavits have been filed before and after in terms of the said orders, the workmen shall be entitled to the interest.”

10. Learned senior counsel further submitted that the respondents were bound to give interest as per the settlements recorded by this Court in WP (C) No. 1624/2001 as the Division Bench of this Court vide orders dated 30.03.2011 and 02.05.2011 passed in LPA No.773/2010 and Review Petition No. 249/2011 respectively had not decided as to what were the settlements arrived at between the parties. Accordingly, the petitioner Union will be entitled to interest as per the settlements recorded in the aforementioned orders, that is, only if the affidavits had been filed prior to 15.03.1998.

11. Learned senior counsel submitted that the term “benefit of settlements”, used by the Division Bench of this Court in its order dated 02.05.2011 cannot be stretched by the petitioner Union to include any additional benefit beyond what was granted under the consent orders dated 19.08.2002 and 09.09.2002 and no further amount is liable to be deposited by the respondents. A total sum of Rs.17,65,19,288/- had already been paid to the workers and no outstanding dues survive.

12. Further submitted that WP(C) No.6755/2001 was filed by the separate Union which was representing about 200 workers, who had

not filed their affidavits in terms of settlement of 1997 and modified settlement of 1999. They were permitted to file their affidavits before the Management and they shall be paid interest on the same rate, as had been given to other workers, who had filed their affidavits earlier. Thus, the aforementioned modified settlement was applicable to above 200 workers and not to the petitioner Union.

13. I have heard the learned counsel for the parties.

14. I note, vide order dated 03.03.2010 passed in CONT. CAS (C) Nos.219/2004, 221/2004 and 409/2004, this Court held that interests shall be paid only to the workers who had filed affidavits prior to 15.03.1998. Thus, the relief qua the petitioner Union was declined. Being aggrieved, the petitioner Union filed LPA No.773/2010, which was disposed of by the Division Bench of this Court vide order dated 30.03.2011, wherein held that interest would be paid from 16.12.1997 to 31.08.1999 to the workers irrespective of whether they had filed their affidavits prior to 15.03.1998. The respondent Management filed Review Petition No.249/2011, which was disposed of vide order dated 02.05.2011, wherein recorded that the workers who have got their benefits under the settlements, shall not be entitled to get benefit under the modified settlement, as agreed before this Court. It is further recorded that all the parties shall be bound by the undertaking given to the Court in view of the matter having been settled amicably between the parties.

15. The case of the respondents is that they are bound by the settlements recorded by this Court in WP (C) No. 1624/2001. The Division Bench of this Court vide orders dated 30.03.2011 and 02.05.2011 passed in LPA No.773/2010 and Review Petition No. 249/2011 respectively had not decided as to what were the settlements arrived at between the parties. Further stand of the respondent Management is that a total sum of Rs.17,65,19,288/- had already been paid to the workers and no outstanding dues survive.

16. I note that this Court vide order dated 19.08.2002 also permitted the separate Union, which filed WP(C) No.6755/2001 representing about 200 workers, who had not filed their affidavits in terms of settlement of 1997 and modified settlement of 1999, to file their affidavits before the Management and they shall be paid interest on the same rate, as had been paid to other workers, who had filed their affidavits earlier. Thus, the aforementioned modified settlement was applicable to above 200 workers and not to the petitioner Union.

17. For convenience, Section 2(b) of the Contempt of Courts Act, 1971 defining 'Civil Contempt' is reproduced below:-

“civil contempt” means wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breaches of an undertaking given to a court.”

18. In the case of ***Jharieswar Prasad Paul Vs. Tarak Nath Ganguly, (2002) 5 SCC 352***, the Apex Court held that if it is found

that there is violation of order passed by the court, the court may punish the contemnor; otherwise notice of contempt is to be discharged. An order passed in the contempt petition cannot be a supplemental order to the main order granting relief.

19. Further in the case of *Kanwar Singh Saini Vs. High Court of Delhi*, (2012) 4 SCC 307, the Apex Court held that contempt jurisdiction is attracted when disobedience of court order or undertaking to court is willful and contumacious.

20. So far as the case in hand is concerned, dispute regarding dues of the workmen was finally settled between the company and its workers by way of two settlements entered into in the year 1997 and 1999 respectively. Accordingly, interest upto 31.08.1999 was payable to all workmen, who submitted their affidavits prior to 15.03.1998; and in addition to above, interest upto 31.08.1999 was payable to 200 workmen, members of the petitioner Union in WP(C) No. 6755/2011 who were directed to file their affidavits. The petitioner Union categorically admitted that its members did not submit their affidavits prior to 15.03.1998.

21. In view of the facts recorded above, in my considered opinion there is no such material to the satisfaction of the judicial conscience of this Court so as to hold that there had been any willful disobedience or intentional laches on the part of the present contemnors. Therefore, the respondents cannot be held liable under the Contempt Act, hence, I am not inclined to pass any order against the respondents.

22. Consequently, notices of contempt issued against the respondents are discharged.

23. However, the petitioner Union is at liberty to take other legal recourse to get the specific directions against the respondents, if so advised.

24. I may, however, make it clear that the opinion expressed hereinabove will have no bearing on the merits of the case, if filed by the petitioner union.

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

**SURESH KAIT
(JUDGE)**

FEBRUARY 19, 2015
Sb/jg