

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : March 27, 2015

+

LPA 475/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

MOHD. MUNNA & ORS

..... Respondents

Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Subodh Kumar, Advocate
for R-2 and R-3.

+

LPA 503/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SH. ABDUL BARIK AND ORS

..... Respondents

Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+

LPA 504/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by:

Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SH. ARVIND KUMAR AND ORS

..... Respondents

Represented by:

Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+

LPA 505/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by:

Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SH. KARAN SINGH & ORS

..... Respondents

Represented by:

Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+

LPA 506/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by:

Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SH. PRATAP SINGH & ORS

..... Respondents

Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+ **LPA 507/2014**

M/S EXPLICIT LEATHERS Appellant
Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SH. RAM PRAKASH AND ORS Respondents
Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+ **LPA 508/2014**

M/S EXPLICIT LEATHERS Appellant
Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

LAL BAHADUR & ORS Respondents
Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+

LPA 509/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

MOHD HANIF & ORS

..... Respondents

Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+

LPA 510/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SHARMA PRASAD & ORS

..... Respondents

Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+

LPA 511/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

MOHD ASHFAQ KHAN & ORS Respondents
Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+ **LPA 512/2014**

M/S EXPLICIT LEATHERS Appellant
Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SH. SURESH CHAND AND ORS Respondents
Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+ **LPA 513/2014**

M/S EXPLICIT LEATHERS Appellant
Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

PHOOL BABU & ORS Respondents
Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

+

LPA 514/2014

M/S EXPLICIT LEATHERS

..... Appellant

Represented by: Mr.Sameer Jain, Mr.Ekank
Mehra and Ms.Diksha Dua,
Advocates.

versus

SH. PHOOL CHAND VERMA AND ORS

..... Respondents

Represented by: Mr.Katrickay Mathur &
Mr.R.D.Dubey Advocates for
R-1.
Mr.Vijay Chandra Jha and
Ms.Sonia Sharma, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The first respondent in all the captioned appeals raised identical industrial disputes through the Delhi Leather Workers Union, alleging that their service was illegally terminated by the appellant when they raised demand for bonus, gratuity, ESI benefits and minimum wages. The workmen alleged violation of Section 25F of the Industrial Disputes Act, 1947.
2. Before the Labour Court the workmen filed separate but identical statement of claims, and as agreed during hearing of the appeals between learned counsel for the parties, we note further facts with respect to the statement of claim filed by Mohd.Munna, the respondent No.1 of LPA

No.475/2014.

3. The workmen claimed to have worked under the appellant from various dates in the year 2005 till March 26, 2007 and pleaded that their services were terminated when they demanded gratuity, bonus, ESI benefits and minimum wages. Claim was made for reinstatement with full back wages, pleading further that retrenchment compensation contemplated by Section 25F of the ID Act, 1947 was not paid.

4. The appellant was described in the statements of claims as under:-

*“M/s Explicit Leather
86/10, GF/FF, Tughlakabad Extn.
New Delhi-110019*

*H.O. A: 279, Okhla Industrial Area,
Phase-I, New Delhi-110020.”*

5. The appellant pleaded in its reply to the statement of claim that neither workman was employed under it. It was pleaded that the workmen were the employees of one Jassa & Company, Lakarpur, Prahladpur, which fact the appellant claimed came to its knowledge during proceedings before the Deputy Labour Commission.

6. The issues were settled by the learned Labour Court on March 19, 2009. The first issue settled was whether the workmen were the employees of the appellant. The second issue settled was whether their services were terminated illegally and lastly to what relief the workmen would be entitled to.

7. The record of the Labour Court would evince that till when the issues were settled on March 19, 2009, the authorized representative of the

appellant appeared, but thereafter no body appeared for the appellant resulting in the workmen leading ex-parte evidence by way of an affidavit.

8. Seven documents were proved as Ex.WW-1/1 to Ex.WW-1/7. Ex.WW-1/1 is a notice dated July 21, 2007 addressed by the President of the Union to the Deputy Labour Commissioner alleging that the workmen of the appellant employed at RZ-86/10, GF, FF, Tughlakabad Extn. New Delhi-110010, having head office at A-279, Okhla Industrial Area, New Delhi, were not being paid bonus. Ex.WW-1/2 is a demand letter sent by the Union to the appellant at A-279, Okhla Industrial Area, New Delhi, that the workmen be taken back in service because the service was illegally terminated on March 26, 2007. Ex.WW-1/3 is a notice sent by the Union to the Deputy Labour Commissioner requesting an inspection of the premises of the appellant at M/s Explicit Leather, 86/10, GF/FF, Tughlakabad Extn. New Delhi-110019, H.O. A: 279, Okhla Industrial Area, Phase-I, New Delhi-110020. Ex.WW-1/4 is a notice sent by the Labour Commissioner to the appellant making a reference that in spite of being called for on February 23, 2007 and March 02, 2007 since no record was produced, action would be taken against the appellant under the Minimum Wages Act. The notice has been sent in the name of one Rajesh Kumar, stated to be the Director of the appellant at RZ-80/10, First Floor, Tughlakabad, New Delhi. Ex.WW-1/5 is a demand notice dated March 26, 2007 sent by the Union to the appellant at 80/10, First Floor, Tughlakabad Extn. demanding minimum wages for the employees. Ex.WW-1/6 is a notice dated April 12 2007 by the Labour Inspector once again informing appellant that action would be taken against it for violating the Minimum Wages Act. The notice has been sent at 86/10, Tughlakabad Extn. New Delhi. Ex.WW-1/7 is a

communication dated August 08, 2007 by the Asstt.Labour Commissioner to the workman Mohd.Munna informing him that no settlement was arrived at and thus he may apply to the Labour Court for a resolution of the disputes.

9. In view of the fact that the appellant went unrepresented, there being no cross-examination, the learned Labour Court passed separate awards on March 23, 2010, which are identically worded, holding that relationship of employer and employee was established and the management had illegally terminated the service of the workmen. Directing reinstatement, 50% back wages have been awarded.

10. The applicant filed an application on February 07, 2011, praying that the order dated January 18, 2010 proceeding ex-parte against the appellant and the ex-parte award dated January 23, 2010 be set aside. It was pleaded that the management had entrusted the matters to Sh.S.Mitra, Ex-HR Manager who left the company. Mr.Sandeep Gowel and Mr.Sunil Kapoor Advocates had been engaged to coordinate with Sh.S.Mitra; but the two did not appear before the Labour Court. It was pleaded that the management learnt of the ex-parte proceedings on January 22, 2011.

11. Being relevant to note for the purposes of appreciating the reasons given by the learned Labour Court as also the learned Single Judge while refusing to set aside the ex-parte award, in para 7 of the application the appellant pleaded as under:-

“7. That absence of the Management before the Hon’ble Court was not intentional but due to unavoidable circumstances. As the Management had no information about the date fixed. The Management only came to know on 22.01.2011 that the case is proceeded as against ex-parte and ex-parte award against the management has been passed. When the management received notice from the Hon’ble Court

which was for next date of hearing in application LCA No.102/10. The notice was received by the Management only on 22.01.2011.”

12. Being served with the notice of the applications for setting aside the ex-parte awards, the workmen did not file a reply but claimed through the Union, as recorded in the order dated January 04, 2012 passed by the Labour Court, that the management was aware of the awards much prior to January 22, 2011 because the management had received notice of the execution proceedings from the office of the Sub Divisional Magistrate and had appeared in the office of the Sub Divisional Magistrate. On January 04, 2012 the order which was passed by the learned Labour Court reads as under:-

“Present: Sh.R.D.Dubey, Ld.counsel for workman along with workman.

Sh.M.S.Nagar, Ld.counsel for the management.

Ld.counsel for the management has stated that as soon as the management came into knowledge that an ex-parte award has been passed, the application for setting aside the same was filed. The management came into knowledge about pendency of the preset case when notice in LCA No.102/10 was received by the management in its office at Faridabad on 22.01.2011 only. The application is maintainable as the same has been filed within 30 days from the date of knowledge of the management. Sh.S.Mitra, HR of the management had left the services of he management on 15.05.2010 and before leaving the service he did not inform the management that an ex-parte order has been passed on 18.01.2010 against the management. Therefore, management could not contest the case and on 23.01.2010 ex-parte award was passed against the management.

Ld.counsel for the workman has opposed the submissions seeking some time to show that the ex-parte award was in

execution proceedings and notice was issued to the management from SDM office and the management had appeared prior to 22.01.2011. He seeks some time to produce the certified copy of relevant order-sheet from the concerned office.

Therefore, management is directed to produce the original notice which is stated to be received in LCA No.102/10 on 22.01.2011.

Put up for further arguments on pending application of the management on 15.02.2012.”

13. The record would show that neither workman nor the Union filed certified copies of the relevant order-sheets from the office of the Sub Divisional Magistrate and thus did not make good the oral submissions made that the management of the appellant was aware of the ex-parte awards passed on January 23, 2010 prior to January 22, 2011.

14. As regards the appellant, it filed copy of the notice received by it in LAC No.102/2010 which requires the appellant to appear before the Labour Court on March 15, 2011.

15. Dismissing the applications filed by the appellant to set aside the ex-parte awards, the learned Labour Court noted that the workman had not filed certified copy of any record from the office of the Sub Divisional Magistrate to show that the management having prior knowledge. Reason given to dismiss the applications is in paragraph 4 is as under:-

“4. It is further observed that on 04.01.2012 itself direction was given to the management to produce the original notice which is stated to be received in LCA No.102/10 by the management on 22.1.2011 to show that management came to know about the fact that matter has been proceeded ex-parte against it, but the management has also not complied the said

direction. It is observed that it was the duty of the management to prove the facts as stated in the application. Since the management has failed to prove the fact that it came to the notice of the management only on 22.01.2011 when the management received notice in LCA No.102/2010 therefore it seems that is not in the interest of justice to allow the application of management. Hence, in the interest of justice application filed by the management is dismissed and disposed off according.”

16. Writ petitions filed by the appellants challenging the order(s) dated March 23, 2013 have been dismissed by the learned Single Judge on the reasoning that the appellants failed to produce the relevant notice received by it in LCA No.102/2010 on January 22, 2011. The plea taken in the writ petition that Mr.S.Mitra, the Manager HR, who left the appellant, acted in collusion with the workmen has been negated on the reason that this was not stated in the application filed by the appellant before the Labour Court for setting aside the thirteen ex-parte awards.

17. At the outset it may be stated that the pleadings in paragraph 7 of the application filed by the appellant praying for the ex-parte award to be set aside has created a confusion because of the manner in which pleadings concerning LCA No.102/2010 have been made.

18. We have noted hereinabove the pleadings in paragraph 7 of the application, which give a suggestion as if the management received a notice in LCA No.102/2010 which had a concern with the dispute between the workmen and the management. The photocopy of the notice received is in the record of the learned Labour Court, and with regret we note that the learned Labour Court has not taken cognizance thereof and while dismissing the application has put the blame on the appellant holding that the appellant

did not produce the original notice received by it in LCA No.102/2010 (wrongly mentioned in the last but one sentence of the order as LCA No.102/2011). The photocopy of the notice is in the judicial record and would show that the management was required to appear in LCA No.102/2010 on March 15, 2011, in a proceedings initiated by one Kamruddin statedly working at the Mathura Road Factory of the appellant. The date of issue of the notice by the learned Labour Court is not mentioned therein.

19. If only the learned Labour Court would have put the question : What was the relevance for the appellant to plead knowledge being gained through the notice in question pertaining to LCA No.102/2010? would the learned Labour Court have understood what the lawyer for the appellant wanted to convey in the pleadings in paragraph 7 of the application filed by the appellant praying that the ex-parte award(s) be set aside.

20. Similarly, if the learned Single Judge would have posed the question, something of relevance would have turned.

21. It happened like this. When the management of the appellant received the notice in question in LCA No.102/2010, it sent its representative to contact its lawyer Mr.Sandeep Goyal and Mr.Sandeep Kapoor. The employee sent was further instructed by the management to ascertain the status of the proceedings initiated by the first respondent. The employee met the counsels but could get no meaningful information and thought it prudent to find out from the Ahlmad of the Labour Court. This happened on January 22, 2011.

22. Except for above explanation, there is no connection with LCA No.102/2010 and the proceedings initiated by the respondents.

23. It may be true that in the application filed before the learned Labour Court the appellant did not plead collusion of Sh.S.Mitra, its HR Manager, but it has pleaded inaction by him as also the counsels of the appellant in not defending the proceedings diligently. It has been pleaded that Mr.S.Mitra left the employment all of a sudden without informing the management about the status of the cases.

24. The record of the labour court would show that the management was diligently contesting the proceedings right from day one when it received a notice from the Labour Court. On the first day fixed for return of the notice i.e. January 17, 2008, authorized representative of the appellant appeared. He appeared on March 04, 2008 which was the next date; on April 09, 2008 which was the next date; on May 24, 2008 which was the next date; on August 12, 2008 which was the next date; on October 08 2008 which was the next date; on December 10, 2008 which was the next date; and on March 19, 2009 when the issues were settled. None appeared on the next date fixed i.e. July 15, 2009 nor on the next date which was October 30, 2009 nor on January 18, 2010, when the appellant was proceeded against ex-parte.

25. The appellant had shown diligence in defending the proceedings.

26. There is no reason to disbelieve the appellant on the facts pleaded by it before the learned Labour Court for the ex-parte award to be set aside.

27. Unless a party shows a supine negligence or indifference in prosecuting or defending its rights Courts have also been liberal in India in condoning delays in taking steps and especially when the default is by the agent of the parties.

28. Neither the learned Labour Court nor the learned Single Judge disbelieve the appellant that Sh.S.Mitra, its HR Manager, was entrusted with

the job of liaising with the two lawyers Mr.Sandeep Goyal and Mr.Sunil Kapoor, who we find have been negligent in not appearing before the learned Labour Court. Neither the learned Labour Court nor the learned Single Judge disbelieved the appellant that Sh.S.Mitra suddenly left employment without informing the management about the status of the cases. As noted above, the learned Labour Court as well as the learned Single Judge have decided against the appellant on the reason that the appellant could not make good its submission that it learnt about the ex-parte awards only on January 22, 2011, and for which we find that the counsel who drafted the application failed to bring out the relevance of the said dates for the purpose of knowledge in connection with the notice received by the appellant in LCA No.102/2010.

29. Where an injury to a party can be compensated by money, redressal must ensue to the party who suffers irreparably the consequence of an ex-parte decision. The workman can be compensated with costs.

30. We dispose of the appeals setting aside the impugned order(s) dated April 02, 2014 dismissing WP(C) 1011/2014, WP(C) 1013/2014, WP(C) 1014/2014, WP(C) 1015/2014, WP(C) 1016/2014, WP(C) 1017/2014, WP(C) 1018/2014, WP(C) 1019/2014, WP(C) 1020/2014, WP(C) 1109/2014, WP(C) 1110/2014 and order dated May 16, 2014 dismissing WP(C) 918/2014 and WP(C) 920/2014 . The writ petitions are disposed of setting aside the impugned order(s) dated March 23, 2013 passed by the learned Labour Court. The applications filed by the appellant praying for setting aside the ex-parte award(s) dated January 23, 2010 are allowed subject to payment of costs in sum of ₹25,000/- (Rupees Twenty Five Thousand only) by the appellant to each workman before the Labour Court.

The proceedings initiated by the first respondent before the Labour Court registered as DID Nos. 893 of 2007, 887, 891, 894, 895, 896, 897, 899, 901, 902, 903, 904 and 905 of 2008 are restored for adjudication afresh.

31. Parties shall appear before the learned Labour Court on May 05, 2015, on which date the appellant shall tender ₹25,000/- (Rupees Twenty Five Thousand only) to each workman and if the workman are not present the amount shall be deposited with the learned Labour Court.

32. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 27, 2015
skb