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

+ **LPA 121/2015**

DEVI DUTT & ORS

..... Appellants

Represented by: Mr.Sandeep Das, Advocate with
Mr.Vipin Tyagi, Advocate

versus

ABASKAR CONSTRUCTION PVT LTD

..... Respondent

Represented by: None

LPA 122/2015

DEVI DUTT & ORS

..... Appellants

Represented by: Mr.Sandeep Das, Advocate with
Mr.Vipin Tyagi, Advocate

versus

ABASKAR CONSTRUCTION PVT LTD

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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03.03.2015

CM Nos.3918-19/2015 in LPA No.121/2015

CM Nos.3923-24/2015 in LPA No.122/2015

Allowed subject to just exceptions.

CM No.3920/2015 in LPA No.121/2015

CM No.3925/2015 in LPA No.122/2015

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By:AMULYA LPA Nos.121/2015 & 122/2015

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For the reasons stated in the applications the delay in filing the two appeals is condoned.

The applications are disposed of.

LPA Nos.121/2015 & 122/2015

1. Reference made to the Labour Court by the Secretary Labour, Government of NCT of Delhi on January 29, 2003 reads as under:-

“Whether retrenchment of S/Sh.Devi Dutt & two others as per annexure-‘A’ from the services by the management is illegal and/or unjustified, it so to what relief are they entitled and what directions are necessary in this respect?”

2. The reference was necessitated because appellants who were employed in various posts by the respondent were retrenched on March 05, 2002 by Mr.Arun Kumar Jain, the Joint Managing Director of the respondents. The retrenchment compensation as per Section 25F of the ID Act, 1947 which included notice pay, bonus and retrenchment compensation was tendered. The appellants claim not to have received the cheques. The management claims to have tendered the cheques but the appellants refused to receive the same.

3. The decision of the Joint Managing Director was ratified by the Board of Directors of the respondent on March 30, 2002.

4. The appellants raised an industrial dispute questioning the retrenchment and laid a factual foundation by pleading three facts. Firstly that retrenchment compensation envisaged by Section 25F of the ID Act, 1947 was not paid. Secondly that the principle of last come first go enshrined under Section 25G of the ID Act, 1947 was violated. Lastly that after services of the appellants were dispensed with, post retrenchment the respondent employed other persons for the jobs which became vacant when the appellants were retrenched i.e. Section 25 H was violated.

5. After recording evidence, the Labour Court made an award on November 30, 2007 holding against the appellants as regards the alleged violation of Section 25F, 25G and 25H of the ID Act, 1947, and for which we find that the award is based upon an appraisal of the evidence led.

6. But relief was granted to the appellants by the Tribunal holding that Joint Managing Director of the respondent was not empowered as per the memorandum of association of the company to issue the order of retrenchment. The learned Labour Court has relied upon Article 27 of the Article of Association of the respondent which was exhibited as Ex.MW-1/10 as also Article 30 thereof.

7. Noting that the Articles of Association were silent on the subject of retrenchment, the Tribunal held that as per Article 30 it was only the Managing Director who was empowered to exercise the power and privileges on behalf of the company; subject to the supervision and control of the Board of Directors. The learned Labour Court found that the Articles and Memorandum of Association did not envisage any post of Joint Managing Director.

8. The award, as was expected, resulted in the two writ petitions being filed challenging the award. Whereas the respondent filed W.P.(C) No.1959/2008 challenging the award in so far it set aside the retrenchment order passed by the Joint Managing Director, the appellants questioned the award in so far it was held that there was no violation of either Section 25F or Section 25G or Section 25H of the ID Act, 1947.

9. Vide impugned decision dated October 16, 2014, whereas the writ petition filed by the appellants has been dismissed, the one filed by the respondent has been allowed.

10. This explains to appeals filed before us.

11. On the subject whether Sh.Arun Kumar Jain could act as the Joint Managing Director and what was the effect of the Articles of Association of the respondent making no reference to a Joint Managing Director, the learned Single Judge has found as a matter of fact that the decision of Mr.Arun Kumar Jain was ratified by the Board of Directors on March 30, 2002. The logical corollary thereof would be that the requirement of the articles of the respondent that the Managing Director would act under the supervision of the Board of Directors has been made; provided it could be held that there is no difference between a Joint Managing Director and a Managing Director.

12. The learned Single Judge has made a reference to Section 291 of the Companies Act, 1956 to highlight that the Board of Directors of a company exercise powers on behalf of a company. The learned Single Judge has noted the decision of the Supreme Court reported as (1986) 1 SCC 264 LIC Vs. Escorts Ltd. to highlight that a company is in some respect an institution like a State and the Articles and Memorandum of Association of a company would be analogous to the Constitution of the State and that just like in the governance of the State where the administration is left to the Executive Government, Parliament controls the executive functioning, the executive functioning is by Directors subject to control by the board. The modern practice is to confer on the Directors the right to exercise all the powers of the company except such as are reserved to be exercised at the general meetings. The learned Single Judge has noted Section 26 of the Companies Act to bring home the point that it mandates that the Articles of Association of the company prescribe the regulations for the company. The learned Single Judge has highlighted Section 36 to bring home the point that subject to the provisions of the Companies Act the memorandum and Articles of

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Association of a company bind the company and its members. The learned Single Judge has therefore rightly concluded that the Articles of Association are essentially for the internal conduct of affairs of a company and bind the company and its members.

13. With reference to Article 27 of the Articles of Association and Article 30 of the Articles of Association, the learned Single Judge has rightly highlighted that the same empower the Managing Director of the respondent to discharge all executive functions of the company. With reference to Section 2(26) of the Companies Act the learned Single Judge has held that it is not a nomenclature but the entrustment which will determine whether a person would be a Managing Director. The learned Single Judge has rightly concluded that neither the Companies Act nor the Articles of Association of the respondent contemplate there being no Joint Managing Director. To put it pithily, two or more persons could jointly act as the Managing Director and thus each would be referred to as the Joint Managing Director.

14. We concur with the view taken by the learned Single Judge that the impugned award was liable to be set aside for the view taken by the learned Tribunal is contrary to law.

15. As regards non compliance with the Section 25F, 25G and 25H of the ID Act, 1947, suffice it to state that the issues concerning violation of said Sections are factual issues. The learned Labour Court has appraised the relevant evidence which has been briefly touched upon by the learned Single Judge; two concurrent findings of fact have been rendered against the appellant and we refuse to re-appreciate the evidence; terminating this discussion by noting that learned counsel for the appellant has not been able to point out to us that while appraising the evidence on said aspect of the dispute any material document or evidence has been ignored.

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16. The appeals are dismissed in limine.
17. No costs.



PRADEEP NANDRAJOG, J.



PRATIBHA RANI, J.

MARCH 03, 2015

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