

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 13.10.2015

+ **W.P.(C) 6230/2015 & CM No.11347/2015**
M/S. MYNAH DESIGNS Petitioner
Through Mr.Suraj Prakash and Mr.Deepak Kumar
Singh, Advs.
versus

NAUSHAD THROUGH ALL INDIA GENERAL MAZDOOR TRADE UNION
..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J. (ORAL)

1. Challenge in this writ petition is to the *ex parte* award dated 9th October, 2014 passed by the Presiding Officer, Labour Court, Karkardooma Courts, Delhi in ID No.56/2014 whereby a sum of Rs.1,00,000/- as compensation was awarded to the respondent.

2. With the consent of the parties, the petition is taken up for final hearing.

3. The factual matrix of the case are as under:-

The respondent (hereinafter referred to as 'workman') was working with the petitioner (hereinafter referred to as 'management') from 5th January, 2005 on the post of 'Sample Man' as averred in the award. His last drawn salary was Rs.7829/- per month. The services of the workman were terminated by the management on 1st June, 2011 which was without any notice/charge sheet or any domestic inquiry, as such, was in violation of principle of natural justice and Section 25F of Industrial Disputes Act. It was further alleged that a legal demand notice was sent by the management through union to the management on 24th January, 2013 but no reply was sent by the management. A complaint was also made before the Conciliation Officer but the management did not allow the workman to resume his duties. Thereafter complaint was filed before the Assistant Labour Commissioner. Notice was issued to the management directing the management to reinstate the workman in service but management did not reply to the

said notice. The termination of the service of workman was alleged to be illegal.

4. A reference was made by the Secretary (Labour), Govt. of NCT of Delhi to the Labour Court with the following terms of reference:-

“Whether the services of Sh. Naushad S/o Md. Manir has been terminated illegally and/or unjustifiably by the management, if so, to what relief is he entitled and what directions are necessary in this respect?”

5. Notice of reference was sent both to the workman as well as to the management. The workman filed a statement of claim. On 30th May, 2014, Sh. V.K.Kashyap, Advocate/AR for the management appeared and sought time to file written statement. Thereafter nobody appeared on behalf of the management. Even reply to the statement of claim was not filed. As such, vide order dated 4th August, 2014, the management was proceeded *ex parte*.

6. The workman led his evidence by way of affidavit and relied upon certain documents. After perusing the evidence adduced by the workman and hearing the counsel for the workman vide impugned award dated 9th October, 2014, the termination of the workman was held to be illegal and a lump sum amount of Rs.1,00,000/- was granted as retrenchment compensation in lieu of reinstatement, back wages and other consequential reliefs.

7. Feeling aggrieved, the present writ petition has been filed by the petitioner alleging *inter alia* that the workman was appointed as a tailor on monthly salary of Rs.4000/- w.e.f. 1.1.2007. The workman was highly irregular in his services and despite notices sent to him, he remained absent. He sent a reply that he has been doing his own business due to which he could not attend the service of the petitioner regularly and assured the management not to be absent in future. However, after working for two days in the month of December, 2007, he left the services of the petitioner on his own accord. He never came to collect the two days wages amounting to Rs.250/-. After a period of more than 5 years from the date of leaving the services of the petitioner, the respondent sent a false and frivolous demand notice through the union whereby the management was called upon to pay all the legal dues along with salary for the month of May, 2011 and the petitioner was further called upon to reinstate the workman with back wages. The claim was refuted by the management. The workman filed a complaint before the

Labour Conciliation Officer. However, the matter could not be settled through the conciliation proceedings. Thereafter reference was made to the Labour Court. Summons were received by the management pursuant to which the management engaged Mr. Vinay Sharma, Advocate for presenting the petitioner before the Labour Court. His fee was duly paid. The advocate also inserted the name of Mr. Aditya Sharma in the vakalatnama. Instead of appearing himself in the matter before the Labour Court on 30th May, 2014, Mr. Vinay Sharma deputed one of his proxy counsel Mr. V.K. Kashyap who appeared before the Labour Court and filed vakalatnama. Since the presiding officer had gone for training to Delhi Judicial Academy at Dwarka Court, the case was adjourned to 30th July, 2014. On inquiry made by the petitioner from Mr. Vinay Sharma, Advocate on the evening of 30th May, 2014 or on the next day, he was informed that the workman did not appear and the case was likely to be dismissed on the next date, i.e., 30th July, 2014. The petitioner has now come to know that the case was adjourned to 15th July, 2014 and not to 30th July, 2014 and that no one appeared on behalf of the management on 15th July, 2014, as such, the matter was adjourned to 4th August, 2014 for filing written statement. On 30th July, 2014, the petitioner enquired from Mr. Vinay Sharma about the proceedings of the case then he was informed that the case of the respondent/workman has been dismissed. In fact, due to non-appearance of the petitioner/management on 4th August, 2015, the petitioner was proceeded *ex parte* and the matter was adjourned for *ex parte* evidence on 21st August, 2014. The *ex parte* award was passed by the Labour Court on 9th October, 2014. The copy of the *ex parte* award was never served upon the petitioner by the Labour Court. The petitioner has learned that the *ex parte* award was sent by the Labour Court on the old address of the petitioner, therefore, it could not be served upon him. The petitioner received a notice from the respondent/workman through the union on 22nd May, 2015 along with copy of the *ex parte* award wherefrom the petitioner came to know about passing of the *ex parte* award. The management sent an *e mail* to its Advocate Mr. Vinay Sharma seeking his explanation as to why he gave wrong information but no reply has been received. It is submitted that consequence of the impugned *ex parte* award has caused serious prejudice to the petitioner as the petitioner has been made to suffer solely due to its advocate. A bonafide litigant should not be allowed to suffer because of the negligence of the advocate and in order to do complete

justice, the petitioner must be given a chance to contest the case of the respondent on merits. It is further submitted that while only a sum of Rs.250/- is required to be paid to the workman, however, an award for a sum of Rs.1,00,000/- has been passed in his favour. The respondent/workman is now claiming a sum of Rs.1,79,864/- vide his notice dated 22nd May, 2015. Counsel further submits that in compliance of the order of this Court, the awarded amount has already been deposited with the Registrar General of this Court. As such, it is submitted that the petitioner be granted an opportunity to contest the case on merits.

8. Counsel for the respondent, on the other hand, submits that the petitioner was negligent in pursuing the matter which resulted in proceeding the petitioner to be *ex parte*. The impugned award does not suffer from any infirmity, as such, the petition be dismissed.

9. A perusal of the record reveals that after the reference was made to the Labour Court, the summons/notice was sent to the management on 30th April, 2014 which was received back unserved with the report 'left the place two years ago'. As such, a fresh notice was sent to the management on the new address. It is the case of the petitioner that on service of summons, the petitioner engaged Mr. Vinay Sharma, Advocate. On the date of hearing, i.e., 30th May, 2014, instead of appearing himself, Mr. Vinay Sharma, Advocate sent Mr. V.K. Kashyap, Advocate to appear in the Court and thereafter it is alleged that since the presiding officer was not available on that date as he had gone for training to Delhi Judicial Academy, Dwarka Court, the case was adjourned, as per the intimation given to the petitioner, for 30th July, 2014 whereas the matter was actually adjourned for 15th July, 2014 and thereafter to 4th August, 2014. On both the dates, the counsel for the petitioner did not appear, with the result, the management was proceeded *ex parte* which ultimately led to passing of an *ex parte* award against the management.

10. By now it is well settled that for negligence of counsel, the parties should not be made to suffer as held in ***Satyapal Wadera and Ors. vs. Union of India and Ors.***, WP(C) No. 197/2007; ***Grasim Industries Limited vs. Union of India and Ors.***, CM 14095/2006 and 14096/2006 decided on 24th November, 2006 and ***M/s. Godrej Hi Care Ltd. vs. M/s. R.N. Chadha & Co. & Anr.***, FAO 253/2007 decided on 23rd November, 2010. Although it is true that a litigant cannot claim absolute immunity by putting entire blame on his

counsel yet it has to be seen whether his own conduct is cautious or negligent in perusing the case properly.

11. It is alleged that on the date fixed itself, the petitioner had enquired from the counsel about the next date of hearing and he was informed that the matter had been adjourned to 30th July, 2014. On 30th July, 2014, he was informed that the case of the workman had been dismissed. That being so, it cannot be said that the petitioner was not vigilant, however, due to wrong information given by the counsel for the petitioner, the petitioner was proceeded *ex parte* which resulted in passing of the impugned award. The petitioner should not be made to suffer due to negligence and lapses on the part of the counsel. It is the principle of administration of justice that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. Justice can at best be done when both the parties are properly heard. Moreover, in view of the averments made in the writ petition that the respondent/workman himself left the job of the petitioner and agitated the issue belatedly after a lapse of five years, it is a fit case where the management should be granted an opportunity to contest the case on merits.

12. Under the circumstances, the impugned award dated 9th October, 2014 is set aside subject to cost of Rs.15,000/- to be paid to the respondent within two weeks. The parties are directed to appear before the Labour Court on 3rd November, 2015. The Labour Court is directed to afford the petitioner an opportunity to file written statement and to contest the case on merits.

13. The awarded amount has already been deposited by the petitioner with the Registrar General of this Court. Let the same remained deposited with the Registrar General of this Court which will be subject to the outcome of the award which may be passed by the Labour Court.

14. Writ petition along with pending application, if any, stands disposed of.

15. Copy of the judgment be sent to the Labour Court for information and compliance.

(SUNITA GUPTA)
JUDGE

OCTOBER 13, 2015/rs