

\$~

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

Date of Decision: 3rd September, 2015

+ **W.P.(C) 7082/2015**

SH. ANUP KUMAR GUPTA Petitioner

Through: Mr.F.K.Jha, Advocate

versus

SH. SURENDER SINGH Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this writ petition, petitioner has challenged the order of the Labour Court dated 21.05.2015 vide which the application under Order IX Rule 13 read with Section 151 CPC filed by the petitioner for setting aside the ex-parte award dated 14.12.2011 was dismissed.

2. It is the case of the respondent workman that he was working at the post of Operator with the petitioner management since 15.11.2007 at the last drawn wages of Rs.4,000/- per month. The management was not providing certain legal facilities like appointment letter, attendance register, wages register, bonus, PF etc. and when he demanded the same, the management

became annoyed and illegally terminated his services with effect from 13.07.2009 without any justified reasons. As a result, he raised an industrial dispute. Vide order dated 14.05.2010 appropriate government made a reference of the dispute to the Labour Court in the following terms:

“Whether services of Sh.Surender Singh S/o Sh. Maharaj Singh have been illegally and/or unjustifiably terminated by the management; and if yes, to what relief is he entitled and what directions are necessary in this regard?”

3. It is recorded in the impugned award that the petitioner management was called to appear but it did not appear despite service and as such, was proceeded against ex-parte. Thereafter, the workman adduced evidence in support of his claim which, in the absence of the petitioner management, remain unchallenged and unrebutted, leading to passing of the impugned award whereby the termination of the workman was held to be illegal. The management was directed to reinstate the workman forthwith and to make payment of entire backwages within one month.

4. Thereafter, the management moved an application under Order IX Rule 13 read with Section 151 CPC for setting aside the ex-parte award on the ground that the award was passed only on the basis of affixation whereas the report of the process server states that none of the witness

has signed the service report and the process server had given the report stating that Anup Kumar Gupta had refused to accept the summons but his identity was never established. Moreover, the notice was not sent intentionally at the residence of Anup Kumar Gupta so that he could have contested the case of the workman. It was further stated that service by way of affixation was effected upon the management on 23.09.2011 but no photographs were taken of the affixation. Moreover, applicant Anup Kumar Gupta does not have anything to do with the Universal Electronics (T.V. Factory). He is neither the owner/partner/proprietor of Universal Electronics (T.V. Factory) nor he has anything to do with the workman, as such, the award is bad in law. No oral or documentary proof has been given by the workman in respect of ownership of Universal Electronics (T.V. Factory) in any of the proceedings against Anup Kumar Gupta. The workman might succeed against Universal Electronics (T.V. Factory) but Anup Kumar Gupta has nothing to do with it. Anup Kumar Gupta was unaware about the passing of the award till he received notice from the executing court in the last week of November, 2014. The application was contested by the workman. Vide impugned order dated 21.05.2015 the application was dismissed by observing that the applicant Anup Kumar Gupta

intentionally avoided the service of summons during the pendency of the industrial dispute.

5. Feeling aggrieved, the present writ petition has been filed by Anup Kumar Gupta. Notice of the petition was sent to the respondent which was received back unserved with the report that he is not residing at the given address, however, counsel for the petitioner submits that the respondent was duly informed about the pendency of the writ petition before the executing court and in this regard he has placed on record copy of an application under Section 148 Cr.P.C moved by him before the executing court for enlargement of time for compliance of the award stating therein about the pendency of this writ petition and the counsel submits that copy of the application was given to the respondent against receipt. An affidavit in support of the application has been filed. It is submitted that despite being aware of the pendency of the writ petition, he has failed to appear.

6. Counsel for the petitioner submits that the petitioner came to know about the passing of the award only when intimation was received from the executing court in the last week of November, 2014. Thereafter, he moved an application under Order IX Rule 13 CPC before the Labour Court but the same was dismissed on 21.05.2015.

Counsel for the petitioner further submits that the petitioner was never served with the summons and a reference in this regard was made to the report on the summons dated 03.06.2011 which was returned unserved with the report that one person namely Dhruv Prasad met the process server who reported that no firm by the name of M/s Universal Electronics exists at the given address. There was no signboard of the firm at the given address and the process server also could not gather any satisfactory information from the neighbourhood. Again, the summons were sent for 23.09.2011 and it is reported that one Anup Gupta met the process server who was not known to the process server, however, he refused to receive the notice, as such, the copy was pasted at site but no witness was available. Learned counsel submits that this is a manipulated report. The service by way of affixation was effected on the rubber factory but no photographs were taken of the affixation. The respondent never worked with the petitioner either at his rubber factory or at the address given by the respondent.

7. On merits, it was stated by counsel for the petitioner that no oral or documentary proof has been given by the respondent to show that he had anything to do with the petitioner. The petitioner is neither the owner, partner or proprietor of Universal Electronics. Except for

placing on record the legal notice, no other document has been placed on record to prove that he ever worked with the petitioner. Under the circumstances, it is submitted that the refusal to set aside the ex-parte award would cause irreparable loss and injury to the petitioner and would amount to ousting the case of the petitioner on merits without even affording him an opportunity of hearing.

8. By virtue of writ petition under Article 226 and 227 of the Constitution of India, the petitioner seeks setting aside the order of the Labour Court dated 21.05.2015 vide which the application under Order IX Rule 13 CPC moved by him was dismissed. He also seeks setting aside of the award dated 14.12.2011 passed by the Labour Court.

9. While exercising powers under Article 226/227 of the Constitution of India, this Court is not sitting in appeal over the orders of the inferior courts. In ***Municipal Corporation of Delhi v. Asha Ram & Anr.***, 117(2005) DLT 63 it has been held as under:-

"6. The position of law in respect of interference by Writ Court under Article 226 of the Constitution is well settled in view of the following:- (a) The Supreme Court in para 5 in Sadhu Ram v. Delhi Transport Corporation, AIR 1984 SC 1967 observed :

" nor we think that it was right for the High Court to interfere with the Award of the Labour Court under Article 226 on a mere technically. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the

judgment of the High Court and restore the Award of the Presiding Officer."

(b) The Supreme Court in Harbans Lal v. Jag Mohan (1985) 4 SCC 333:

"The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal of subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power."

(c) The Supreme Court in Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors., 1988 (Supp.) SCC 768 in para 10 observed :

".....The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis."

(d) The Hon'ble Supreme Court in Sudhoo v. M/s Haji Lal Mohd. Biri Works and Ors. 1990 Lab. I.C. 1538 in para 8 ruled :

"8. We have gone through the statements of two witnesses

produced by the appellant before the authority. The findings of the authority are based on appreciation of evidence produced by the parties before the authority. We do not agree with the High Court that the finding recorded by authority are based on no evidence. The High Court should not have interfered with the findings of the fact reached by the prescribed authority on appreciation of evidence."

Thus in accordance with the above position of law no interference in findings of facts recorded by the Tribunal is called for. In any event, the petitioner having died and the monetary benefits accruing under the award as per the above claim being confined limited up to the date of the death and payable to his widow, no interference is called for even otherwise under Article 226 of the Constitution."

10. The basic submission of learned counsel for the petitioner is that the petitioner was never served with the summons, therefore, he could not appear before the Labour Court and an ex-parte award was passed. A perusal of Trial Court Record reveals that vide order dated 14.05.2010 a reference was made by the appropriate government by referring the dispute for adjudication between Surender Singh and management of M/s Universal Electronics (T.V.Factory) Khasra No.46/8, Sunder Bagh, Khera Kalan near Apollo Tyres, Delhi-82. Statement of claim was filed by the respondent workman on 01.02.2011. Notice for appearance was sent to M/s Universal Electronics for appearance on 03.06.2011. However, notice could not be served in view of the report of the process server that one person namely Dhruv Prasad met him and informed that

there is no firm by the name of M/s Universal Electronics (T.V.Factory). Thereafter summons in the name of M/s Universal Electronics (T.V.Factory) through its proprietor Anup Kumar Gupta Khasra No.46/8, Sunder Bagh, Khera Kalan near Apollo Tyres, Delhi-82 was again sent for 23.09.2011. As per the report of process server one person namely Anup Gupta met him who did not receive the notice and, therefore, it was pasted at site. Although it is true that there are no witness to the affixation report but it is pertinent to mention here that the petitioner never denied that he met the process server and did not receive the summons. Neither such a plea was taken in his application under Order IX Rule 13 CPC nor before this Court. Even as regards the affixation of the notice at the given address, same has been admitted by the petitioner in ground (D) of the writ petition. It is only alleged that no photographs were taken of affixation. Even if no photographs were taken of the affixation there is no denial of the fact that the service by way of affixation was effected upon the factory of the petitioner. Under the circumstances, there was no reason for the learned Labour Court to disbelieve the report of the process server when the petitioner himself is not denying that he met the process server and did not receive the notice which was affixed at the site. Moreover, pursuant to a query made to the

counsel for the petitioner he admitted that the notice for execution was received by the petitioner on the same address on which the summons were sent to M/s Universal Electronics (T.V Factory) wherein it was specified that Anup Kumar Gupta was the proprietor of M/s Universal Electronics (T.V Factory). Even if the petitioner Anup Kumar Gupta had no concern with M/s Universal Electronics (T.V Factory), he could have appeared before the Court and inform that he has no concern with this firm and there does not exist any relationship of employer and employee between him and respondent. That was not done. Under the circumstances, the order passed by the learned Presiding Officer, Labour Court does not suffer from any infirmity which calls for interference. Moreover, the order of the Labour Court does not suffer from an error of jurisdiction or from breach of principles of natural justice or vitiated by a manifest or apparent error of law.

11. That being so, the writ petition, being devoid of merit, is dismissed.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 03, 2015
mb