

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

Date of Decision: 07.12.2015

+ **W.P.(C) 7400/2015 & CMs 16983/2015 & 13637/2015**

RAVI PAL

... Petitioner

Through: Mr Anil Mittal and Ms Komal Aggawal,
Adv.

versus

DAYA SHANKAR SHARMA

.... Respondent

Through: Mr Arvind Kumar and Ms Sneha Upadhyay,
Adv.

ORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner prays for issuance of directions thereby quashing / setting aside the order dated 03.07.2015, 19.01.2010, 27.09.2010 and award dated 29.01.2011 passed by the Presiding Officer, Labour Court – IX in ID No. 244/2007 and directing the authority to rehear and decide the case afresh after giving full opportunity to the petitioner.

2. It is alleged by the petitioner that it is the sole proprietary concern of Mr Ravi Pal who is engaged in the business of printing press for printing stationery and all kinds of jobs. Due to his business activities he has to remain mainly outdoors to visit clients and prospective clients to procure printing orders and business. He is also required to travel out of Delhi for that purpose. The respondent – Daya Shankar (hereinafter referred to as 'the workman') was engaged by him in December, 1997 as plate maker. However, his work was not satisfactory and he was warned time and again by the management. Thereupon, the workman stopped reporting for duty in the beginning of the year 1999. In April, 2003 the workman again approached the petitioner for job saying that he was in dire need of job. Taking pity on him, the petitioner asked him to work as an attendant to his mentally challenged young son. The workman agreed and thereafter started working

as a personal employee of the petitioner from April, 2003. Since the workman was found to be misbehaving and maltreating the mentally challenged child and was reprimanded for the same, he stopped reporting for duty from October, 2003. The petitioner received legal notice dated 05.04.2004 from the workman through advocate alleging therein that he was not paid his regular salary since 1997 and he was not allowed to join services since November, 2003. The matter was referred to conciliation where parties tried to settle the matter but conciliation failed. On account of failure of conciliation, the appropriate government vide order dated 12.12.2007 referred the matter to Labour Court for adjudication. The petitioner did not hear anything from the respondent – workman nor received any notice from the court either through ordinary process or by post or courier. The petitioner was shocked to receive notice dated 29.08.2014 issued by Mr K.R. Verma, Joint Labour Commissioner, Delhi in which it was mentioned that pursuant to award dated 29.01.2014 passed in ID No. 244 of 2007 by the Labour Court, the petitioner was directed to deposit a sum of Rs. 12,68,192/-. Thereafter, the petitioner engaged an advocate and on inspection of record it was revealed that the petitioner was proceeded ex parte and an ex parte award dated 29.01.2011 was passed. Thereafter, an application for setting aside the ex parte order / award was moved which was dismissed by the Labour Court vide impugned order dated 03.07.2015.

3. The impugned order, alongwith the other orders, have been challenged by filing this writ petition, inter alia, on the ground that although by the order dated 01.03.2008, the petitioner was ordered to be served by registered post, courier and process server, yet the notice was sent only through process server and not by any other mode. As per the provisions of Order V Rule 17 CPC, if the respondent refused to accept notice or is absent from his residence or place of business and then the process server is required to affix the copy of summons at his residence or place of business. If the Court was of the opinion that the respondent is keeping out of the way to avoid service of summons then as per Order V Rule 20 CPC, the Court should order service by substituted mode which was not resorted to in the instant case. Moreover, as per Rule 18 of the Industrial Disputes (Central) Rules, 1957, the summons are required to be sent by ordinary process and registered post. If the other party refused to accept the summons, the same should be

sent under certificate of posting.

4. It is submitted by learned counsel for the petitioner that there is violation of provisions of Order V and various rules besides Rule 18 of the Industrial Disputes (Central) Rules, 1957 as such the order deserves to be set aside. The petitioner has a meritorious case on merit as such he should be granted an opportunity to contest the case on merits. Reliance in this regard was placed on **Smt Chhanno v. Bachan Singh**, Vol. XCIV – (1988-2), Punjab Law Reporter 598; **Raj Bala v. Krishna Kaul**, Manu/DE/4150/2012 and **Raj Kunwar v. Manmohan Chind**, 2013 (3) CG.LR.W 265.

5. On the other hand, learned counsel for the respondent – workman submits that the petitioner was throughout aware of the proceedings of the case which is reflected from the fact that various processes were sent to the petitioner but the petitioner avoided to receive the same and the report on the summons were to the effect that *‘the proprietor of the management is not available in the office and there is no fixed time of his coming to the office’*. It was further submitted that opportunity was also given to the management to produce the record on different dates of his visiting outstation but no such record could be produced. Under the circumstances, the Court was justified in proceeding the respondent (petitioner herein) ex parte. The whole endeavour of the petitioner is to delay the disposal of the matter and to pay the dues of the workman. As regards sending of notice by UPC is concerned, the counsel submits that postal department has now stopped the service by UPC as such the order does not suffer from any infirmity which calls for interference.

6. I have given my considered thoughts to the respective submissions made by learned counsel for the parties and have perused the Trial Court record.

7. A perusal of Trial Court record reveals that after the reference of the dispute by the Secretary (Labour), Government of NCT of Delhi, vide order dated 12.12.2007, the respondent – workman appeared and filed his statement of claim on 01.03.2008. The petitioner - management was ordered to be served ‘by registered cover, courier and through process server’. The management was not served and as such he was directed to

be served as per the order dated 01.03.2008 meaning thereby service was to be effected by way of ordinary process, registered cover and courier. On 13.12.2008 besides ordering notice to the management through registered cover and ordinary process; dasti notice was also ordered. It seems that at no point of time, notice was neither sent by registered post or through courier nor dasti notice was taken. Ordinary process was sent and on 19.01.2010, the Presiding Officer ordered that the report of the process server reveals that the management appeared to be avoiding service intentionally despite having notice of pendency of this matter hence the management is deemed to be served. The matter was adjourned for filing of written statement by the management on 16.03.2010, 13.07.2010, and ultimately the respondent was proceeded *ex parte* on 27.09.2010. Thereafter the *ex parte* award was passed on 29th January, 2011.

8. A perusal of report of all the summons sent to the petitioner reveals that the proprietor of the petitioner management was never available at the given address. Some labour used to meet the process server who did not disclose his name and refused to receive the summons. The sole question for consideration is whether from these reports it is to be presumed that the petitioner was duly served with the summons or he avoided receiving the summons.

9. In ***Smt Chhanno*** (supra), there was specific order for issuance of summons by registered post but registered cover was not filed. The process server made a report of refusal of service. Accepting that report, the respondent was proceeded *ex parte*. The application for setting aside the *ex parte* proceedings was moved which was dismissed and the matter was taken to High Court. It was observed that Order 5 Rule 19A of the Code provides for simultaneous issuance of summons to the defendant for service by post in addition to personal service. It lays down that the Court, in addition to, and simultaneous with the issue of summons for service in the manner provided in Rule 19 (both inclusive) also direct the summons to be served by registered office, acknowledgment due, addressed to the defendant, or his agents. The proviso to Rule 19A(1) no doubt lays down that nothing in this sub rule shall require the court to issue summonses for service by registered post, where, in the circumstances of the case the court considers it unnecessary. In a case where the Court does not make any order for

simultaneous issuance of summons by registered post acknowledgement due in addition to personal service, it can legitimately be deemed that the court considered it unnecessary to issue summons for service by registered post. However, the Court had made specific order for issuance of summons to the petitioner by registered post which was not complied with. Thus, the report of alleged refusal of service of summons issued by ordinary way could not be made the basis for taking ex parte proceedings against the petitioner. Therefore, the order was set aside.

10. In **Raj Bala** (supra), the application under Order 9 Rule 13 CPC moved by the defendant for setting aside the ex parte judgment and decree was allowed by the Additional Sessions Judge. The order was challenged by filing a writ petition by the respondent. This Court found that the summons sent by ordinary process could not be served on the defendant as the reports were that he was not residing at the given address. Thereafter, the defendant was ordered to be served through registered post and publication. The petitioner could not satisfy having sent the notice through registered cover and neither took any steps for service of defendant by publication. However, the defendant was proceeded ex parte. In view of that matter, it was observed that the ex parte decree was rightly set aside and no interference was called for. On the factual matrix of the case, in **Raj Kunwar** (supra) also the ex parte decree was set aside.

11. Reverting to the case in hand, indisputably despite the fact that the orders were passed by the Labour Court for issuance of notice to the respondent (petitioner herein) by registered post and courier, no such steps were taken by the respondent – workman. The Labour Court relied upon report of the process server that the labour of the employer met the process server and reported that the employer is not available and has gone out and that the labour refused to receive the summons. From this report, at best, it could be gathered that the respondent (petitioner herein) was avoiding service of summons. In that eventuality, Rule 20 of Order V CPC provides for substituted service whereby the court should have ordered for service of summons by affixation and a copy of the same pasted at some conspicuous part of the business premises of the respondent or house where he was residing. Besides that, service by advertisement in newspapers could also have been ordered, but no such recourse was taken. Rule 17 of Order V CPC also provides for

affixation of the copy where the defendant refuses to accept the service or cannot be found. However, in the instant case, there is nothing to show that the notice was ever affixed either by the process server or affixation was even ordered by the Labour Court.

12. Furthermore, as per Rule 18 of the Industrial Disputes Act (Central) Rules, 1957, the notice / summons is to be served either personally or by registered post and in the event of refusal by the party concerned to accept the notice, the same is to be sent again under certificate of posting. Although, counsel submits that certificate of posting has since been dispensed with by the Postal Department but the fact remains that despite initial direction to send the notice by registered post as well as courier, no such course of action was taken by the petitioner (respondent herein).

13. Moreover, it is the case of the petitioner that although the respondent was initially employed by the petitioner in his firm in December, 1997, but he stopped reporting for duties in the beginning of 1999. Thereafter at his request, he was allowed to work as an attendant to the mentally challenged young child of Mr Ravi Pal in April, 2003 but since he was misbehaving and maltreating the child as such he was reprimanded. Thereafter he stopped reporting for duties from October, 2003. The respondent, on the other hand, claimed to be employee of the petitioner since 01.08.1994 and alleged that his services were terminated with effect from 10.03.2005. Thus the merits of the case are also required to be adjudicated upon.

14. Under the circumstances, in the interest of justice, the impugned order dated 03.07.2015, dismissing the application of the petitioner for setting aside the ex parte award, is set aside, subject to Rs.25,000/- as costs, which be paid by the petitioner to the respondent – workman before the Labour Court. As a corollary, the ex parte award dated 29.01.2011 is also set aside with directions to the Labour Court to pass a fresh award after affording the parties of being heard. Keeping in view the fact that the award was passed way back on 29.01.2011, it is impressed upon the Labour Court to dispose of the matter within a period of four (4) months. The parties are directed to appear before the concerned Labour Court on 18.12.2015, on which date, the petitioner is directed to file his written statement.

15. At the time of admission of this writ petition, the petitioner had deposited 50% of the amount as claimed vide recovery notice dated 14.08.2015 with the Registrar General of this Court. The amount shall remain deposited with the Registrar General of the Court and will be subject to the outcome of the award which may be passed by the Labour Court.

The petition stands disposed of accordingly.

Pending CMs also stand disposed of.

Copy of the judgment along with Trial Court record be sent back immediately through special messenger.

(SUNITA GUPTA)
JUDGE

DECEMBER 07, 2015/*rd*