



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

CRP (MD).No.2212 of 2016

WEB COPY

E.S.I. Corporation, Tirunelveli,

Represented by its Joint Regional Director

: Petitioner/ 1st Respondent

Vs.

1. Tuticorin Thermal Power Station

(A Unit of TNEB), Tuticorin - 628 004

2. TTPS Contractors Association

through its Secretary, Tuticorin - 628 004

: Respondents/Petitioner /
2nd Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 31.03.2015 passed by the ESI Court (i.e. Labour Court) Tirunelveli in I.A.No.61 of 2015 in ESI O.P.No.2 of 2014.

For Petitioner : Mr. P. Ganapathisamy

ORDER

The Civil Revision Petition is filed to set aside the order dated 31.03.2015 passed by the ESI Court (i.e. Labour Court), Tirunelveli in I.A.No.61 of 2015 in ESI O.P.No.2 of 2014.

2. The petitioner filed an application to strike down the evidence of PW.2. The petitioner/ESI Corporation who was the respondent filed I.A.No.61 of 2015 in ESIOP.No.2 of 2014 stating that the petitioner examined PW.2 who was a party to this proceeding as second respondent and he was already set ex parte. As there is no provision to examine a person who was set ex parte, his evidence is to be struck down. However, the said application was not considered by the Court below and the same was dismissed. Assailing the dismissal order passed by the Court below, the revision petitioner has filed the present Civil Revision Petition before this Court.

3. The first respondent filed a counter affidavit in the aforesaid I.A.NO.61 of 2015 stating that the OP was posted for cross examination of one Packiam as PW.2 on 13.02.2015 and 25.02.2015, and at this stage, the present application has been filed by the petitioner. However, as per Order 16 Rule 14 of CPC, the evidence of PW.2 is correct. By accepting such contention, the Court below dismissed the Interlocutory Application.



4. In view of the said submission made by the learned counsel for the petitioner, setting aside the order passed in Interlocutory application is unsustainable in law, since the first respondent was set ex parte, there is no locus standi to examine the official of the second respondent as witness before the trial Court. The arguments advanced by the petitioner counsel cannot be countenanced since PW.2 only examined as witness in the said suit, under Order 16 Rule 14 of CPC which reads as follows:-

" Court may of its own accord summon as witnesses strangers to suit:-

Subject to the provisions of this case as to attendance and appearance and to any law for the time being in force, where the court of any time thinks fit necessary to examine any person including a party to the suit and not called as witness by a party to the suit, the Court may of its own motion cause such person to be summoned as a witness to give evidence or to produce any document in his possession on a day to be appointed any may examine this as witness or required him to produce such document".

5. The Court below has rightly relied on the judgment reported in 2001(3)CTC 20 and 2005(3) LW 453 and observed that normally the Court should not encourage the summoning of the other side for giving evidence for the party. If it was done, the Court must take necessary inference and the PW.2 was a party to the proceedings he did not appear and file his objections at the time of trial stage. Therefore, at this stage, it is necessary evidence in the aforesaid suit under the provisions of the Act. The court below has considered and rightly dismissed above said IA stating that the evidence of PW.2 is necessary for the said suit. In such circumstances, this Court does not warrant any interference in the order passed by the Court below.

6. In the result, the Civil Revision Petition is dismissed. No costs. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,

ESI Court (i.e. Labour Court), Tirunelveli.

CRP (MD) .No.2212 of 2016

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