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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:17.02.2016

Ramesh Kaushik

...Petitioner

Versus

Haryana State Agricultural Marketing Board, Sector-6,
Panchkula and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. N.C. Kinra, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari challenging the order dated 30.11.2015 (Annexure P-6).

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

Petitioner had filed an application under Section 33C(2) of the Industrial Disputes Act, 1947 ('Act' for short) asking the respondent-Management to pay difference of auction money in equal proportions to the petitioner and private respondents.

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Case of the petitioner, in brief, was that he was working as an Auctioneer with Market Committee Madlauda. Private respondents has also been engaged as Auctioneer by respondent No.2 from time to time. Petitioner had not been paid his full share with regard to the auctions supervised by him and the private respondents. In fact auction charges were liable to be shared equally by all the 10 Auctioneers.

Respondents No.1 and 2 in their written statement averred that petitioner had been paid his share in accordance with the work done by him during the relevant period.

On the pleadings of the parties, following issues were framed by the Tribunal:-

- “1. *Whether the applicant-workman is entitled to the amount along with the interest @ 18%b P.A. as claimed in the application? OPA*
2. *Relief.*”

Parties led their evidence in support of their respective pleas.

Industrial Tribunal-cum-Labour Court vide order dated 30.11.2015 dismissed the application filed by the petitioner. Hence, the present petition by the petitioner-applicant.

It has been held by this Court in ***Vijay Parkash versus General Manager, Haryana Roadways***

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Depot, Kaithal, 1995(1) PLR 231, as under:-

*“After hearing learned counsel for the petitioner we are of the view that the contention has no merit. The orders passed by the department stopping increments whether after hearing or even without hearing the petitioner continue to be the good orders till the same are set aside in appropriate proceedings. The apex court in **State of Punjab and others v. Gurdev Sing Ashok Kumar, AIR 1991 SC 2219 : 1991 (3) S.C.T. 91** took a view that the order of dismissal though void is governed by Article 120 of the Limitation Act. Thus, it has to be concluded that a void order is also required to be set aside within the period of limitation. The petitioner has failed to show the dates of orders passed by the respondent-authorities whereby his increments were stopped. Even otherwise, the order stopping increments of the petitioner could be agitated before a forum either on the ground that the same were void or contrary to the principles of natural justice or against the statutory rules. In the absence of these orders having been set aside by a competent court, the petitioner could not straightway move a petition under section 33-C (2) of the Act and the Labour Court could not exercise its powers under the above provisions and grant relief. Thus, in our view the Labour Court has taken a correct view in declining the prayer and rightly dismissed the application of the petitioner under section 33-C(2) of the Act. In these circumstances, no interference is called for in the matter and the writ petition is consequently dismissed.”*

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It has further been held by Supreme Court in **Central Inland Water Transport Corporation Ltd. versus The Workmen and another**, 1974(4) SCC 696, as under:-

*“It is now well-settled that a proceeding under section 33(C)(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In **Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar**, (1968) (1) SCR 140 it was reiterated that proceedings under section 33(C) (2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the Position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that it to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.*

In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the

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defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function or an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under section 33(C)(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under section 33(C)(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental' To call determinations (i) and (ii) 'Incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under section 33(C)(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself function say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to

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*above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in **State Bank of Bikaner and Jaipur v. R. L. Khandelwal** (1968) 2 Lab LJ 589 (SC), that a workman cannot put forward a claim in an application under section 33(C)(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under section 10 of the Act.”*

In the present case, there was dispute with regard to the sharing of the auction money. Till the said dispute was adjudicated, the relief sought by the petitioner could not have been granted to him in an application moved by him under Section 33C(2) of the Act. In these circumstances, the learned Industrial Tribunal-cum-Labour Court rightly held that the petitioner should have got the dispute adjudicated from the competent authority/Court and thereafter his claim could have been considered on an application under Section 33C(2) of the Act. It has further been noticed by the Industrial Tribunal-cum-Labour Court that petitioner had admitted before Sub Divisional Magistrate, Panipat in writing that he

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had received full share of auction money. Hence, the application moved by the petitioner under Section 33C(2) of the Act had rightly dismissed by the Industrial Tribunal-cum-Labour Court.

No ground for interference by this Court while exercising powers under Section 226 of the Constitution of India, is made out.

Dismissed.

February 17, 2016
kapil

(SABINA)
JUDGE