

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2016

DELIVERED ON : 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.12830 of 2010

M.P. No.1 of 2010

1.The Management of  
M/s.Deena Paints Ltd.,  
Regd. Office, ACL House,  
C-9, Ph.1, New Delhi – 110 020.

2.M/s.Deena Paints Ltd.,  
Rep. by its Regional Manager,  
Regional Office,  
1109, 1110, A Wing, Mital Towers,  
M.G.Road, Bangalore.

3.The Branch Manager,  
Branch Officer,  
M/s.Deena Paints Ltd.,  
372, Patel Road, Ramnagar,  
Coimbatore – 9.

... Petitioners

Vs.

1.The Presiding Officer,  
Labour Court,  
Coimbatore.

2.T.Krishnamoorthy  
Respondents

...

**PRAYER:** This Writ Petition is filed under Article 226 of the Constitution of India  
to issue a Writ of Certiorari, calling for the records from the file of the 1<sup>st</sup>

Respondent made in I.P.No.364 of 2007 in I.D.No.187 of 2003 dated 11.04.2008 and to quash the same.

For Petitioner :Mr.P.Indumathi

For 2<sup>nd</sup> Respondent :Mr.C.Murugesan

### **O R D E R**

The prayer in the writ petition is for a Writ of Certiorari, to call for the records from the file of the 1<sup>st</sup> Respondent made in I.P.No.364 of 2007 in I.D.No.187 of 2003 dated 11.04.2008, and quash the same.

2.The case of the petitioners is that they are engaged in manufacturing and selling paints. The second petitioner is a Regional Office and third petitioner is a Branch Office. The second respondent was acting as a selling agent of the petitioners on commission basis. There was no relationship of employer and employee between the petitioners and the second respondent and that being so, the second respondent raised Industrial Dispute in I.D.No.187 of 2003 before the 1<sup>st</sup> respondent, seeking reinstatement with all service benefits on the allegation that the second respondent was employee of the petitioners and he was dismissed from service on 24.02.2002.

3. Though the petitioners herein had filed counter affidavit in the said I.D. refuting the allegations made by the second respondent that he was an employee of the petitioners and he was dismissed from service, when the said I.D. came up for hearing before the first respondent Labour Court on 26.09.2005, since the authorised person on behalf of the petitioners was suffering with viral fever, he could not attend before the Labour Court for enquiry and therefore, on the said date the I.D. was allowed ex-parte and the Labour Court directed the petitioners herein to reinstate the second respondent herein in service with 25% back wages with attendant benefits.

4. The said ex-parte award passed against the petitioners herein came to their knowledge only after some time and immediately on noticing the same, the petitioners herein had filed petition in I.P.No.364 of 2007 to condone the delay of 127 days in filing the application to set aside the ex-parte award. However, the first respondent Labour Court without considering the said application to condone the delay in filing the application to set aside the ex-parte award and to restore the ID, had dismissed the petition filed by the petitioners herein before the Labour Court, as not maintainable, as the first respondent

Labour Court had become functus officio. Aggrieved by the said order passed by the first respondent Labour Court vide order dated 11.04.2008, in I.P.No.364 of 2007, the petitioner has come out with the present petition with the aforesaid prayer.

5.Heard both sides.

6.The learned counsel appearing for the petitioners, by drawing the attention of this Court to the reasoning given by the Labour Court for not entertaining the application filed by the petitioner to condone the delay in filing the application to set aside the exparte award, would state that the first respondent Labour Court had formulated a question as to whether the petition to condone the delay of 127 days in filing the petition seeking to set aside the exparte award is to be allowed or not. In order to answer the said question, the Labour Court after having relied upon the judgment of the Hon'ble Apex Court reported in **2004 LIC 4039** as well as other aspects has ultimately come to the conclusion that the Labour Court would exercise the jurisdiction to entertain the petition to set aside the exparte award only if the said petition is filed within 30 days from the date of notification of the award within the meaning of Section 17-A of the

Industrial Disputes Act, 1947 (hereinafter referred to as Act) and after completion of the 30 days, if the application is filed, the same cannot be entertained as the Labour Court has become functus officio. In that view of the matter, the Presiding Officer, Labour Court, Coimbatore had dismissed the petition filed by the petitioners herein for condoning the delay in filing the petition to set aside the ex-parte award.

7.The learned counsel for the petitioners in this regard would contend that Rule 48 of the Tamil Nadu Industrial Disputes Rules, 1958 (herein after referred to as Rules) is the enabling provision by which petition can be filed to set aside ex-parte award and to restore the industrial dispute and in this regard if there is any delay, the same can also be condoned under the proviso to Rule 48(1) and (2) of the Rules. In this regard the learned counsel invited the attention of this Court to Rule 48, which is reproduced hereunder:

“ Rule 48. Ex-parte proceedings:- (1) If, without showing sufficient cause any party to proceedings before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the

Board, Court, Labour Court, Tribunal or the Arbitrator may proceed as if the party had duly attended or had been represented.

(2) The Board, Court, Labour Court, or Tribunal or an Arbitrator may for sufficient cause, set aside, after notice to the opposite party, the ex-parte decision either wholly or in part, on an application made within 15 days of the ex-parte decision:

Provided that an application may be admitted after the said period of 15 days, if the applicant satisfies the Board, Court, Labour Court or Tribunal or Arbitrator, as the case may be, that he had sufficient cause for not preferring the application within that period.

(3) An application under sub-rule(2) shall be supported by an affidavit."

8. In view of the said proviso of Sub Rule (2) of Rule 48 of the Rules, if any application satisfies the Labour Court that he had sufficient cause for not filing the application within 30 days to set aside the ex-parte award, then such application can very well be entertained by the Labour Court and heard. In the case on hand, though such explicit provision has been given in the Rules, the first respondent has passed the impugned order not entertaining the petition filed by the petitioners to condone the delay of 127 days in filing the petition to set aside the ex-parte award by citing the reason that after 30 days in view of Section 17-A of the Act, the Labour Court itself become functus officio and in that view of

the matter the petition could not be entertained. This, according to the learned counsel for the petitioners, is not in consonance with the said Rule and also not in consonance with the decision of the Hon'ble Apex Court reported in **(2009) 3 MLJ 1368 (SC)** in the matter of **Radhakrishna Mani Tripathi v. L.H.Patel and Another .**

9.Per contra, the learned counsel appearing for the second respondent would contend that Section 17-A of the I.D. Act has made it abundantly clear that the award including arbitration award shall become enforceable on the expiry of 30 days from the date of publication under Section 17 of the Act. Once the award is published under Section 17 of the Act, after the expiry of 30 days it become enforceable one. Once the award has become enforceable, the same cannot be interfered with/tinkered with by the subsequent proceedings of the Labour Court by which the award is passed. In order to put a full stop for modifying, reviewing and revising the award passed by the Labour Court or Industrial Tribunal concerned after it become enforceable, the said provision of 17-A was enacted and therefore, when the intention of the legislature is very clear and the language used in Section 17-A is also unambiguous, there can be no contra interpretation

as has been sought for by the petitioners can be granted or given by this Court. The learned counsel for second respondent would make his further contention that the order passed by the first respondent which is impugned herein is strictly in consonance with the provision, namely 17-A of the Act and the learned counsel appearing for the second respondent would also rely upon the judgment of the Hon'ble Apex Court in **Grindlays Bank v. Central Government Industrial Tribunal [1981-I-LLJ-327 (SC) = 1990 Supp. SCC 420**. The learned counsel for the second respondent would also rely upon two other judgments of the Hon'ble Apex Court i.e. **(2012) 8 SCC 579** in the matter of **Haryana Suraj Malthing Ltd. v. Phool Chand** and also **(2012) 8 SCC 575** in the matter of **Ram Shiroman Mishra v. Vishwanath Pandey**. In these two decisions referred to above, the Hon'ble Apex Court after having taken into account the pronouncement made in **Grindlays Bank Ltd.**, case (supra) and after noting the subsequent conflicting decision in **Radhakrishna Mani Tripathi** case (supra), had referred the issue before a Larger Bench of the Hon'ble Apex Court. following the same, the Hon'ble Apex Court in **Ram Shiroman Mishra** case (supra) also has noted the earlier reference made by the Apex Court in **Haryana Suraj Malting Ltd.** case (supra) to the larger

Bench and in fact has expressed its disability to decide the issue since the said issue having been referred to a Larger Bench. Therefore, awaiting the verdict of the decision of the Larger Bench to be given in this regard, the issue was left open without giving any decision. In view of these decisions, which are more or less on the same line, in so far as the status of the Labour Court/Industrial Tribunal that they become functus officio on completion of 30 days from the date of publication of award under Section 17 of the Act, those decisions were rendered by the respective Labour Courts/Industrial Tribunal in those cases refusing to entertain petition to restore the Industrial Dispute or refusal to entertain the petition to condone the delay in filing petition to set aside award exparte passed in the Industrial Disputes. Therefore, the present order, which is impugned herein also, according to the learned counsel for the second respondent, is fully justifiable in view of the legal position and also in view of the explicit provision of Section 17-A of the Act. Therefore, the impugned order need not be interfered by this Court, he contended.

10. This Court has considered the said rival submissions made by the learned counsel for the petitioner as well as the learned counsel for the second

respondent and also considered the materials placed before this Court.

11.No doubt, the award in I.D.No.187 of 2003 dated 27.09.2005 is an exparte award and in order to set aside the said exparte award petition under Order 48(2) and (3) of the Rules were filed by the petitioners herein. Since there were delay of 127 days in filing the petition to set aside the exparte award, I.P.No.364 of 2007 in I.D.No.187 of 2003 was filed to condone of the delay of 127 days. In support of the said petition, a supporting affidavit was filed explaining the reason for non-filing of the petition within the time and a counter statement was also filed by the respondent therein. Thus, the first respondent herein after taking into consideration the claim and rival claim, dismissed the said application to condone the delay of 127 days in filing the petition to set aside the exparte order. The main reason, according to the first respondent, is that the Labour Court become functus officio after expiry of 30 days from the date of publication of the award in view of Section 17-A of the Act. Hence, the reasons stated in the impugned order is reproduced herein for better appreciation of the issue:

“9.As pointed out in the abovesaid decision the Supreme Court held that under Section 17-A of the Industrial Disputes Act 1947 an award becomes enforceable on the expiry of 30 days from the date

of publication of award. So this Labour Court has got power to set aside the exparte award until the expiry of 30 days from the date of publication of the award. This Labour Court has passed an exparte award on 26.9.2005 and it seems to be the award was published on 22.12.05 as per Ex.R.1. This application was filed for setting aside the award was passed in I.D.No.187/03 by the petitioner on 2.3.06 i.e after expiry of 30 days from the date of publication of award. Having regard to the provisions contained in section 17-A of the Industrial Disputes Act 1947 on the abovesaid Supreme Court Decision the application must be filed before the expiry of 30 days from the date of publication of the award. Hence, the reasons stated in the application for the delay the 127 days has not acceptable. This Labour Court has power to entertain the application before the expiry of 30 days from the date of publication thereon. After expiry of 30 days from the date of publication this Labour Court has no power to entertain this application. As pointed out by the Supreme Court of India in the above decision, the Jurisdiction of the Labour Court would be exercised limited time i.e. 30 days from the date of publication of the award is fairly applicable. In view of the Hon'ble Supreme Court decision in Grindlays Bank, such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17-A of the Act, the Labour Court or the Tribunal, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other

words, upon the expiry of 30 days from the date of publication of the award the same having become enforceable, the Labour Court would become functus officis.

10. For the forgoing reasons, there is no merits in the application I hold that the petition is liable to be dismissed.”

12. The aforesaid factors are not in controversy. Now, the only question is whether the first respondent Labour Court has become functus officio after 30 days of publication of the Award in view of Section 17-A of the Act and if so, the petition filed under Order 48(2) and (3) of the Rules by the petitioners herein can be rejected.

13. No doubt Section 17-A of the Act makes it abundantly clear that the award passed by the Labour Court or Industrial Tribunal would become enforceable on the expiry of 30 days from the date of its publication. Here in the case on hand, admittedly the petition to set aside the *ex parte* award was filed beyond 30 days period, that is why the petitioners have filed petition to condone the delay of 127 days in filing the said petition. Whether, once the award become enforceable, still the Labour Court has got power to entertain the petition to set

aside the award or not, has already been considered by various High Courts and also in some of the decisions rendered by the Hon'ble Apex Court. The lead case in this regard is **Grindlays Bank Ltd.** case. In fact the said case has been considered by the decision of the Hon'ble Apex Court in **Radhakrishna Mani Tripathi** case (supra). In the said case, after having considered the import of the law laid down by the Hon'ble Apex Court in **Grindlays Bank Ltd.**, case (supra), their Lordships have held as follows:

“18. We are unable to accept. The position is made clear in the later decision in [Anil Sood vs. Presiding Officer Labour Court II](#), (2001) 10 SCC

534 : 2001-I-LLJ-1113. In *Anil Sood v. Presiding Officer Labour Court II* (supra) interestingly the Labour Court had rejected the recall application on the very same ground that after making the award it became functus officio in the matter. The order of the Labour Court was challenged before the High Court but the High Court also took the same view. In appeal this Court noted that the award was made on 11.09.1995 and the application for its recall was filed on 6.11.95. The Court referred to the earlier decision in *Grindlays Bank v. Central Government Industrial Tribunal and others* (supra) and the provisions of sub-sections (1) and (3) of [Section 11](#) of the Act and in paragraphs 6, 7, and 8 of the decision observed and held as follows:

"6. The aspect that the party against whom award is to be made due opportunity to defend has to be given is a matter of procedure and not that of power in the sense in which the language is adopted in [Section 11](#). When matters are referred to the tribunal or court they have to be decided objectively and the Tribunals/Courts have to exercise their discretion in a judicial manner without arbitrariness by following the general principles of law and rules of natural justice.

"7. The power to proceed ex-parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex-parte award.

"8. If this be the position in law, both the High Court and the Tribunal (sic Labour Court) fell into an error in stating that the Labour Court had become functus officio after making the award though ex-parte. We set aside the order made and the award passed by the Labour Court and affirmed by the High Court in this regard, in view of the fact that the learned counsel for the respondent conceded that application filed by the appellant be allowed, set aside the ex-parte award and restore the reference."

19. In light of the decision in *Anil Sood v. Presiding Officer Labour Court II* (supra) we find no substance in the appellant's submission based on Section 17-A of the Act. There being no substance in the first limb of the submission there is no question of any conflict between rule 26(2) of the Maharashtra Rules and Section 17-A the Act.”

14. Though such a decision was made in **Radhakrishna Mani Tripathi** case (supra), subsequently the same was noticed by another Bench of the Hon'ble Apex Court in **Haryana Suraj Malting Ltd. v. Phool Chand [(2012) 8 SCC 579]**, in that case the Hon'ble Apex Court after taking note of the conflicting views made in **Sangham Tape Co. v. Hans Raj** reported in **(2005) 9 SCC 331** as well as the said **Radhakrishna Mani Tripathi** case (supra) has referred the issue before a Larger Bench and such reference is in the following terms:

“2. It may be noted that on this question two Division Bench decisions have taken apparently conflicting views. [In Sangham Tape Co. v. Hans Raj \[\(2005\) 9 SCC 331\]](#) a two-Judge Bench held and observed that an application for recall of an ex parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/ publication of the award. A

contrary view was taken in [Radhakrishna Mani Tripathi v. L.H. Patel](#) to [(2009) 2 SCC 81], which one of us (Aftab Alam, J.) was a party.

3. In both cases, that is to say, Sangham Tape Co. [(2005) 9 SCC 331] and Radhakrishna Mani Tripathi [(2009) 2 SCC 81], the Court referred to and relied upon the earlier decisions in [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal](#) and [Anil Sood v. Labour Court](#) [1980 Supp SCC 420] but read and interpreted those two decisions completely differently.

4. The conflict which has arisen as a result of the two decisions can only be resolved by a larger Bench. Let these cases be, therefore, listed before a three-Judge Bench."

15. Subsequently, by the other decision i.e., **Ram Shiroman Mishra v. Vishwanath Pandey** reported in (2012) 8 SCC 575, the reference made in **Haryana Suraj Malting Ltd.** case (supra) has been taken note of and Their Lordships have held as follows:

"9. In **Sangam Tape Co., v. Hans Raj** [(2005) 9 SCC 331] a two Judges Bench held and observed that an application for recall of an ex-parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/publication of award. A contrary view was taken by a two Judges Bench to which one of us (Aftab

Alam, J.) was a party, in ***Radhakrishna Man i Tripathi v. L. H. Patel***, (2009) 2 SCC 81. In both cases, the court referred to and relied upon the earlier decisions in ***Grindlays Bank Ltd. v. Central Government Industrial Tribunal***, (1980) Supp. SCC 420 and ***Anil Sood v. Presiding Officer, Labour Court II***, (2001) 10 SCC 534, but read and interpreted those two decisions completely differently. Noticing this conflict, a Division Bench in ***M/S. Haryana Suraj Malting Ltd. V. Phool Chand (SLP (C) No. 6091/2010***, to which one of us (Aftab Alam, J.) was a party has referred the said issue to a larger Bench. Since the same issue is involved in this case, it is not possible for us to dispose of this matter. We will have to await the decision of the larger Bench. In the circumstances, we grant leave.”

16. Therefore, the issue as to whether a petition to set aside the ex-parte award passed by the Labour Court/Industrial Tribunal, filed beyond 30 days period of the award having become enforceable within the meaning of Section 17-A of the Industrial Disputes Act, is maintainable or not by the Labour Court/Industrial Tribunal concerned, had been the issue in a number of cases and as has been rightly held by their Lordships in their decision there were conflicting views as though the ***Grindlays Bank Ltd.*** case (supra) has been

taken note of by the Hon'ble Apex Court in **Radhakrishna Mani Tripathi** case (supra), the same has been distinguished and it was held that after having taken note of the decision in **Anil Sood v. Presiding Officer, Labour Court II**, reported in **(2001) 10 SCC 534**, and has given a finding that there is no conflict between Rule 26(2) of the Maharashtra Rules and Section 17-A of the Act, 1947. Their Lordships in the said judgment in **Radhakrishna Mani Tripathi** (supra) has made the following observation and finding at para 17 of the judgment, which is reproduced hereunder:

“17. From the above quotation it would appear that in *Grindlays Bank v. Central Government Industrial Tribunal and Others* (supra) the recall application was filed within 30 days from the date of publication of the award and hence, the objection raised on the basis of Sec.17A did not arise in this case. In *Grindlays Bank v. Central Government Industrial Tribunal and Others* (supra) this Court didn't say that the industrial courts would have no jurisdiction to entertain an application for setting aside an award made after 30 days of its publication. Nevertheless, on the basis of the passage marked in italics in the above quotation Mrs. Issar strongly contended that is the true import of the judgment.”

17.If this ratio of **Radhakrishna Mani Tripathi** (supra) is applied to the present case, certainly there would be no impediment for the Labour Court

to entertain the application to set aside the exparte award even beyond the period of 30 days, provided, if satisfactory reasons are given by the petitioners either for filing petition to condone the delay or for non-appearance before the Court at the time when it has set the petitioner ex-party.

18.However, in a judgment of this Court by a learned Judge in the matter of **K.Manoharan v. The Presiding Officer in W.P.(MD) No.1395 of 2011 dated 06.12.2013**, the learned Judge after having referred almost all these cases cited above has held as follows:

“13. Even though reference to the larger Bench has been made, when there is already judgment of the larger Bench rendered in 1980 (Supp) SCC 420 - [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal - Coram](#) - 3 Judges extracted supra, the law laid down by the larger bench would prevail in view of the decision of G.M.Telecom -vs- A.Srinivasa Rao reported in 1997 (8) SCC 767. This Court in a decision reported in the Management (rep. by K.Anbumani, President, Pallipatti village Panchayat) Macheri Union, and Chellammal and others reported in 2010 (1) L.L.N.563 has rejected the claim of the Management who was filed an application after 470 days after the award came into force. Taking note of the judgment rendered in 1980 (Supp) SCC 420 - [Grindlays Bank Ltd. v. Central Govt. Industrial](#)

Tribunal, I am of the view that the Labour Court was right in dismissing the petition to condone the delay nearly 1000 days is in accordance with the legal principles and in conformity with the Industrial Disputes Act and Rules, and there is no illegality in the impugned order.”

19. In the said case cited supra since the delay was nearly 1000 days, probably the learned Judge would have taken a decision that such petition to condone such a huge delay need not be entertained in view of the fortified provisions under Section 17-A of the Industrial Disputes Act. However, the learned Judge in the said judgment at paragraphs 14 and 15 has made the following observations:

“14. I would have certainly allowed the original prayer in the writ petition as the Labour Court has to render to award on merits if one of the parties is absent and the dismissal for default is not an award. Unfortunately, the petitioner has amended the prayer as stated supra and even if I allow this writ petition with the amended prayer, the Labour Court will have no powers to take up the Industrial Dispute on file as it had become functus officio as the award has been published and has come into force and the application to condone the delay of 989 days to set aside the ex-parte award dated 08.10.1996 was rightly rejected by the Labour Court.

15. Since the award has come into force and that there is a delay of nearly 1000 days, the Tribunal has become functus officio and in view

of the Supreme Court decision in **Grindlays Bank Ltd., v. Central Govt. Industrial Tribunal and others** reported in 1980 (Supp) SCC 420, no relief can be granted based on the amended prayer.”

20. After having analysed all these judgments including the one where the learned Judge had passed the order in the matter of **K. Manoharan** (cited supra), this Court is of the view that in this issue an authoritative pronouncement has not yet been made. Even the law laid down in the **Grindlays Bank Ltd.** (supra) has been distinguished in **Radhakrishna Mani Tripathi** case (supra) and after having noted the conflicting decisions in **Sangham Tape Co.** case (supra) and **Radhakrishna Mani Tripathi** case (supra), the Hon'ble Supreme Court in **Haryana Suraj Malting Ltd.** (supra) referred the issue to the Larger Bench of the Hon'ble Apex Court and the same has been reiterated by the **Ram Shiroman Mishra** case (supra). Therefore, as on date there are two different decisions of the Hon'ble Apex Court. One is that petition to set aside can be entertained beyond the period of 30 days of the award in spite of Section 17-A of the Act. The other view is that such a petition can never be entertained in view of Section 17-A of the Act, where the award becomes operational on the expiry of 30 days from the publication. Once the award

become operational, the same cannot be tinkered as the Court become functus officio, is another view.

21. Here in this case, reasons have been adduced by the petitioners for non-appearing on the particular date when the petitioners were set ex-parte that, too on medical ground, thereafter on receipt of communication that award has been passed against the petitioners, immediately petition was filed to set aside the ex-parte award, of course with a delay of 127 days, for which separate petition was also filed. In this context Rule 48 of the Rules, in the opinion of this Court, can be employed to resolve this issue. Under Rule 48(1) ex-parte proceedings can be issued by the Labour Court. Under Rule 48(2) for sufficient cause, the Labour Court or Industrial Tribunal can set aside the ex-parte decision voluntarily or on an application made within 15 days of the ex-parte award. However, the proviso to sub-rule 2 to Rule 48 says if an application is made after the said period of 15 days and if the application satisfies the Board/Court/the Labour Court/Tribunal/ Arbitrator as the case may be that he had sufficient cause for not preferring the application within time, then the petition can be entertained beyond 15 days time. Once an application is entertainable beyond 15 days time

under the proviso to Rule 48(2) and since there is no express provision that such an application entertained must be within 30 days from the date of publication of the award in view of Section 17-A of the Act, this Court is of the considered view that such application can be entertained with a condone delay petition even beyond 30 days period, provided, if reason is given to the satisfaction of the Labour Court/ Industrial Tribunal concerned.

22.If Section 17-A of the Act as well as Rule 48 of the Rules are read together by employing the theory of harmonious construction certainly the view expressed by the Hon'ble Apex Court in **Radhakrishna Mani Tripathi** case (supra) alone could be possible view. In this regard the decision in **Radhakrishna Mani Tripathi** case, where their Lordships compared Section 17-A of the Act as well as Section 26(2) of the Industrial Disputes (Bombay) Rules, can be taken as a precedent for cases of this nature as the present issue also squarely falls under that category. Therefore, in view of the said factors and the decisions of the Hon'ble Apex Court, this Court is of the considered view that the petition filed to condone the delay of 127 days in filing the petition to set aside exparte award could have been entertained by the first

respondent Labour Court by invoking the aforesaid Rule 48(2) of the Rules and therefore, in that view of the matter, the present impugned order rejecting the said application on the ground that the first respondent Labour Court has become functus officio beyond 30 days from the date of publication as envisaged under Section 17-A of the Act, is erroneous and therefore, this Court has no hesitation to set aside the said impugned order passed by the first respondent and is remanding the matter for entertaining the said application and to decide the same on merits.

23. In the result, the writ petition is allowed. The impugned order made in I.P.No.364 of 2007 in I.D.No.187 of 2003 dated 11.04.2008 is set aside and the first respondent Labour Court is directed to take up the application made by the petitioner in I.P.No.364 of 2007 on file and to decide the same on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

**12.01.2017**

Index : Yes  
Internet : Yes  
sj

To

1.The Presiding Officer,  
Labour Court,  
Coimbatore.

**R.SURESH KUMAR, J.**

sj/kua

Pre-delivery order in  
**W.P. No.12830 of 2010**  
**M.P. No.1 of 2010**

**Delivered on**  
**12.01.2017**