

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 03.01.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.1683 & 1684 of 2002
and WVMP No.353 & 354 of 2007

M/s.South India Structural Corporation Ltd.,
rep. by its Director Mr.K.Chidambaram,
Rani Seethai Hall, III Floor,
603, Anna Salai, Chennai-600 006. ... Petitioner in both
Writ Petitions

vs

1. M.Lakshmanan
2. The II Additional Labour Court,
High Court Building, Chennai. ... Respondents in
both Writ Petitions

Prayer: These Writ Petitions are filed under Article 226 of the
Constitution, praying for the issuance of Writ of Certiorari, to
call for the records of the second respondent, II Additional
Labour Court, Chennai and quash the order dated 27.6.2001 made
in I.A.Nos.1109 & 1110 of 2000 in I.D.No.378 of 1996.

For petitioner : Mr.C.Franco Louis
For respondent R1 : No appearance
R2 : Court

ORDER

These Writ Petitions have been filed by the petitioners,
seeking for the issuance of Writ of Certiorari, to call for the
records of the second respondent, II Additional Labour Court,
Chennai and quash the common order dated 27.6.2001 made in
I.A.Nos.1109 & 1110 of 2000 in I.D.No.378 of 1996.

2. The above said Interlocutory Applications, viz.,
I.A.Nos.1109 and 1110 of 2000 were filed in I.D.No.378 of 1996
by the first respondent herein, seeking to reopen the case and
summon the petitioner Company for recording the evidence and for
cross examination by him. By order, dated 27.6.2001, the second
respondent Labour Court, allowed the said applications.

3. The brief facts, which give rise to the filing of the Industrial Dispute and the consequent Writ Petitions, are as follows:

4. The petitioner is a Company dealing in fabrication work. The first respondent was employed as Assistant Manager. His services came to be terminated being temporary engagement, vide termination order dated 28.2.1994. Against the said termination order, the first respondent raised an industrial dispute vide I.D.No.378 of 1996, assailing the action of the Management.

5. The petitioner company filed its counter statement inter alia contending that the first respondent is not a workman and therefore, he is not entitled to approach the Labour Court and the industrial dispute was, therefore, not maintainable.

6. In the proceedings before the second respondent Labour Court, the first respondent employee was examined as a witness and exhibits W1 to W11 were marked. The employee was also cross-examined in detail and through him, the Management marked Exs.M1 to M14. While marking the documents which were photocopies, originals of the same were shown and thereafter, the copies were marked. It appears that subsequently, another set of documents, viz., M15 to M25 were marked by consent after production of the originals. Thereafter, after cross-examination, an endorsement was made on 27.6.2000 on behalf of the Management, to the effect that there was no oral evidence. Thereafter, the matter was posted for arguments.

7. It appears that subsequently, the matter was adjourned on few occasions for arguments and on behalf of the first respondent employee, two interlocutory applications were taken out, viz., I.A.Nos.1109 and 1110 of 2000 for reopening the case and for summoning the writ petitioner company for recording evidence and cross-examination by the employee. Since there was no requirement for filing the Interlocutory Applications, on behalf of the Management, a counter statement was filed resisting the applications. However, the said applications came to be dismissed for default on 1.2.2001. The first respondent employee, after dismissal of the interlocutory applications, had taken two applications in I.A.Nos.141 and 142 of 2001 seeking to set aside the order of dismissal made on 1.2.2001 in I.A.Nos.1109 and 1110 of 2000.

8. In response to the subsequent interlocutory applications, the Management filed counter statements, protesting to the grant of any relief in the said applications.

9. The second respondent Labour Court, notwithstanding the objections raised by the Management, allowed the applications in I.A.Nos.141 and 142 of 2001, by order dated 14.5.2001 wherein, while setting aside the ex parte order of dismissal dated 1.2.2001 restored the Interlocutory Applications, viz., IA.Nos.1109 and 1110 of 2000. Subsequently, the Labour Court, vide impugned order dated 27.6.2001, allowed the interlocutory applications, stating that the Management has to produce originals of the documents already marked through appropriate witness. Against the said order of the Labour Court dated 27.6.2001, the petitioner Management is before this Court.

10. Heard Shri C.Franco Louis, who is appearing for the petitioner and perused the entire materials available on record.

11. The learned counsel for the petitioner strenuously contended that there was absolutely no necessity for the second respondent Labour Court to reopen the case and to summon the Management for examination and production of originals of the documents already marked since during the examination of the first respondent employee, the originals were produced and the documents were marked through him and such exercise need not be repeated through the Management witness and in fact, all the documents which came to be marked in the proceedings before the Labour Court only after the originals of the same were produced and the same were marked either through the first respondent employee or by mutual consent of the parties. That being the case, ordering for reopening the case and summoning the originals which were already shown and produced, was unnecessary and was not at all warranted.

12. Mr.Franco Louis further contended that from the documents marked, it will unequivocally prove that the first respondent is not a workman and therefore, the industrial dispute raised by him, was not at all maintainable. The learned counsel had taken this Court through the exhibits marked in the proceedings before the Labour Court. the Labour Court, in its order, has in fact, concluded that all the required evidence in support of the Management's case was done through the cross examination of the employee and as whatever documents which were necessary for supporting the case, were marked either by consent or through the employee, there was no necessity for letting in any oral evidence on behalf of the Management. Having concluded so, the learned Labour Court, without any compelling circumstances or reasons, had accepted the case of the first respondent and allowed the interlocutory applications. From the order impugned, it could be seen that the Labour Court had not

given any acceptable reasons for allowing the interlocutory applications filed by the first respondent, despite legitimate and serious objections raised before the Labour Court on behalf of the Management.

13. On a perusal of the materials on record and on consideration of the submissions made on behalf of the writ petitioner, this Court is of the view that the impugned order passed by the Labour Court is unnecessary and cannot be countenanced both in law and on facts. The Labour Court has not spelt out any acceptable reasons as to why the interlocutory applications filed by the first respondent should be allowed particularly in view of its own conclusion that the Management had fully established its case through the cross-examination of the employee by marking the required documents on production of the originals. Even otherwise, no party can be compelled to let in evidence since not letting in evidence, the party concerned would be at the risk by allowing the Court in drawing inference against it. Such being the case, when the Management has made an endorsement that there was no oral evidence on its behalf, it is not open to the first respondent to compel the Management to let in evidence particularly when the documents relied upon by the Management were marked through the employee after being produced the originals and compared.

14. In view of the above, the impugned order passed by the Labour Court dated 27.6.2001 in I.A.Nos.1109 and 1110 of 2000 is set aside. It is brought to the notice of this Court that in view of the interim order passed in the Writ Petition, the main industrial dispute is still pending on the file of the second respondent Labour Court. In the circumstances, the second respondent Labour Court is directed to proceed with the industrial dispute in I.D.No.378 of 1996 and dispose of the same, after hearing the arguments of the respective parties, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

In the light of the above, the Writ Petitions are disposed of. No costs. Consequently, connected WPMPs and WVMP are closed.

Sd/-
Assistant Registrar

//True Copy//

suk

Sub Assistant Registrar

To
The Presiding Officer,
II Additional Labour Court,
Chennai.

+lcc to Mr.Franco Louis, Advocate, S.R.No.422

SV(CO)
RS(25/01/2017)

Pre delivery order in
W.P.Nos.1683 & 1684 of 2002



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