IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CR No.7365 of 2017
Date of decision : 27.10.2017

Prathnesh Barar and others

...Petitioners

Versus

Prabhu Dayal and another

...Respondents

2. CR No.7368 of 2017
Date of decision : 27.10.2017

Prathnesh Barar and others

...Petitioners

Versus

Hari Kishan and another

...Respondents

3. CR No.7370 of 2017
Date of decision : 27.10.2017

Prathnesh Barar and others

...Petitioners

Versus

Ram Sabadh and another

...Respondents

4. CR No.7378 of 2017
Date of decision : 27.10.2017

Prathnesh Barar and others

...Petitioners

Versus

Gulshan Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Aggarwal, Advocate for the petitioners.

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ANIL KSHETARPAL, J. (ORAL)

By this order, I shall be disposing of CR Nos.7365, 7368, 7370 and 7378 of 2017.

The alleged Ex-Directors are in revision petitions against the order passed by the Civil Court ordering the detention of the Director/responsible Officer of the Judgment Debtor Company in the civil imprisonment. The relevant direction of the Court are extracted as under:-

> *"As the report of the PNB and IFCI suggests and even it is admitted by the appearing applicants that the properties of the JD company are already attached for satisfaction of the secured debts, so now the only option which remains to be with the present Court for the satisfaction of the present Award is only detention of the Director/Responsible Officer of the JD company in the Civil Imprisonment being judgment debtors under Order 21 Rule 30 of CPC."*

This case has a chequered history. Various workmen had filed applications which were referred to the Labour Court for adjudication. Before the Labour Court, Management entered into a settlement and the references were disposed of vide award dated 29.03.2013. The operative part of the award reads as under:-

> *"2. Today in Lok Adalat a compromise has been effected*

> *between the parties vide which the respondent company shall pay the gratuity and other outstanding amount due to the workman after two months of opening/breaking of the seals by IFCI Limited and other financial institutions towards whom the respondent company is debtor and after handing over the assets of the respondent company to the respondent by creditor IFCI Limited and other financial institutions. Since the workmen are very poor people hence manager of IFCI Limited and other financial institutions towards whom the respondent company is debtor are directed to break open the seal of the respondent company by Ist June, 2013 and are directed to hand over the assets of the respondent company so that outstanding dues alongwith amount of gratuity be paid to the workman and other creditors within two months of the opening of seal. The reference is answered accordingly as per settlement. Copies of award be sent to the authorities concerned and file be consigned to the record room after due compliance."*

Since as per the compromise, the payments were not made, therefore, initially a request was made to the Labour Court for transferring the execution to the Civil Court. However, the request was not accepted. The Labour Court transmitted the execution petition to Additional Chief Judicial Magistrate, Faridabad on 02.12.2015. Thereafter, learned District and Sessions Judge was requested and consequently case was assigned to the Court.

The Court after summoning the concerned parties has passed the order which is under challenge before me. The relevant extract of the order has been reproduced above.

Learned counsel for the petitioners has made following submissions:-

1. As per Sub-Section 10 of Section 11 of the Industrial Disputes Act, the Labour Court is required to transmit the award and not the execution petition.
2. Petitioners before this Court are the Ex-Directors who are not liable to pay the amount.
3. Award is not executable as such.
4. Labour Court did not adjudicate upon the amount to be awarded and now huge amount is being claimed.

I have considered the submissions of the learned counsel for the petitioners and with his able assistance gone through the documents available in the paper book.

As regards the first submission, it is suffice to notice that the objection taken by the petitioners is highly hyper-technical. Such objection is procedural in nature. No doubt, Sub-Section 10 of Section 11 of the Act, provides that the Labour Court shall transmit the award, however, the award is to be transmitted only for the purpose of execution. In the present case rather than award, the execution petition has been transferred and award is part thereof. Therefore, this Court does not find any force in the first submission of the learned counsel for the petitioners.

Second argument of learned counsel is that the petitioners are Ex-Directors and, therefore, they are not liable. Learned counsel for the petitioners has referred to Section 426 of the Companies Act, 1956 to contend that the liability of the Directors is limited to the extent of their share capital. Hence, no order could be passed against the Ex-Directors. It may be noticed that before the Civil Judge (Junior Division), petitioners did not raise any such contention. A reading of the order shows that the attention of the Court was not drawn to this aspect of the matter.

Learned counsel for the petitioners has referred to me an application which is alleged to have been filed by the petitioners dated 13.09.2017 i.e. the date of the impugned order. If any such application has been moved, the petitioners would be at liberty to make a prayer to the Civil Judge for decision thereon.

Next submission of the learned counsel is that the award is not executable. In my considered opinion, such contention on behalf of the Management is wholly mischievous. Management with open eyes entered into a settlement before the Lok Adalat. It was for the Management to assert before the Lok Adalat that the amount should be determined. A reading of the order shows that a compromise was arrived at before the Lok Adalat and the Management undertook to pay the gratuity and outstanding amount due to the workmen after two months of the opening/breaking of the seals by IFCI Limited and other financial institutions. The award in this case was passed on 29.03.2013. For the last more than 4 ½ years, the payment has not been made. In the considered opinion of this Court, the plea taken by the learned counsel for the petitioners is wholly untenable.

Last submission of the learned counsel is that the amount has not been adjudicated upon. It was for the company to take notice of the fact at the time when compromise was entered into. Once the Management with open eyes entered into a settlement, the Management cannot be permitted to resile therefrom.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the order passed by the Civil Judge (Junior Division), Faridabad. All the revision petitions are disposed of with the liberty as granted above.

27.10.2017 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**