

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4400 of 2011

Date of Decision: 17.01.2017

Rajan Sharma

... Petitioner

Versus

The Presiding Officer and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.S. Saini, Advocate,
for the petitioner.

Mr. B.B. Sharma, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. Having heard the learned counsel for the petitioner at length, this Court is of opinion that neither the award dated February 25, 2004 nor the impugned order passed under Section 33-C (2) of the Industrial Disputes Act, 1947 are executable against Rajan Sharma S/o B.L. Sharma personally as he was a Director of the company which became defunct in 2001 by operation of the Companies (Amendment) Act, 2000 [Companies Act, 1956] which required every private company in India existing on the commencement of the amendment with a paid-up capital of less than one lakh rupees would have to, within a period of two years from such commencement, enhance its paid-up capital to one lakh rupees failing which the company shall be deemed to be a defunct company within the meaning of Section 560 of the Companies Act, 1956 and its name shall be struck off from the Register of Companies.

2. Accordingly, on failure of the company to increase its share capital it became defunct. Therefore, the learned Labour Court-II, Faridabad

committed patent illegality in summoning Rajan Sharma to appear before the Labour Court on September 15, 2005 failing which he would be proceeded against ex parte. It may be noticed that in the application filed under Section 33-C (2) the cause title presented before the Labour Court was framed by the workman as follows:-

*“M/s Raj Gautom Financial Services Pvt. Ltd. B-60, Nehru
Ground Opp. Telephone Exchange, NIT, Faridabad.”*

3. It is clear that the action was brought against a company and not against Rajan Sharma personally as ex Director of the company and if he did not appear before the Labour Court he was under threat of facing ex parte proceedings and inviting trouble for himself and, therefore, his contesting the reference by putting in pleadings has to be understood in this manner and not as admission of personal liability or the liability of the company, if any. Even as a Director of the private limited company Rajan Sharma was not under any personal liability towards the respondent workman to discharge debts of the company, whether defunct or not. Even the respondent workman did not name Rajan Sharma or claimed relief against him. The Labour Court-II, Faridabad appears to have thought of this novel extra judicial way on its own initiative to introduce Rajan Sharma which was a rather improper thing to do.

4. As a result, I would allow the petition to the extent of ordering exclusion of Rajan Sharma from the proceedings and from the face of the record without expressing any opinion as to the correctness or otherwise of the impugned order which is left enforceable against the company by whatever legal means as are available to the workman. The summoning order of the petitioner is quashed since there is patent defect in exercise of

jurisdiction by the Labour Court-II, Faridabad to rope in Rajan Sharma with material irregularity even though he was not party by name. Then the ends of justice demand that the matter should be remitted to the Labour Court for anything that the workman might like to say before it to claim money due, if rightfully pre-existing, against the defunct company. Ordered accordingly.

5. The respondent-workman is directed to appear on remand before the Labour Court-II, Faridabad for further proceedings on 06.02.2017.

(RAJIV NARAIN RAINA)
JUDGE

17.01.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*