IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.745 of 2017 (O&M)
Date of Decision: 18.01.2017

M/s Horizon Global Limited ... Petitioner

Versus

Presiding Officer, Industrial Tribunal
Cum Labour Court and another ... Respondents

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

Present: Mr. Sandeep Vermani, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. M/s Horizon Global Limited (for short 'Horizon') and M/s Rubber Marshall (for short 'Rubber Marshall') do business from the same industrial premises bearing Plot No.9, Tigaon Road, Ballabgarh, Faridabad. Horizon is the petitioner trying to palm off the liability to Rubber Marshal under the award dated September 05, 2016 passed by the Presiding Officer, Labour Court, Circle-1, Faridabad. The private respondent is the workman who worked as a Security Guard from March 14, 2012 till August 05, 2015 when his services were terminated without assigning any reason, without notice and without payment of retrenchment compensation. The workman served a demand notice dated August 21, 2015 on the Manager of Horizon. A copy was served on the Assistant Labour Commissioner, Circle-4, Faridabad. Notice of conciliation proceedings was issued to Horizon. They did not respond or participate in the conciliation proceedings. Instead Rubber Marshall filed a reply to the demand notice denying that the

workman was an employee of Horizon and instead he is an employee of Rubber Marshall since April 01, 2014 on a monthly salary of ₹ 6,000/- per month. They say he was one amongst four employees working in the factory. Rubber Marshal claimed that the workman had taken an advance of ₹ 10,000/- from them to perform the marriage of his daughter and thereafter he remained absent till August 06, 2015 with an intention not to pay back the advance money. Rubber Marshall offered in conciliation that they would be glad to reinstate the worker on his old post if he relented to surrender his claim to arrears of back wages on the principle of 'no work no pay'. Horizon has placed on record a receipt of ₹ 10,000/- executed between Rubber Marshall and the workman placed at Annex P-4. The conciliation proceedings could not result in a settlement and the Assistant Labour Commissioner forwarded his failure report to the Government upon which reference No.31/2016 was remitted by the appropriate government to the Labour Court and the same was registered on March 01, 2016 for adjudication. Neither Horizon appeared nor Rubber Marshall before the Labour Court and they were proceeded against ex parte. The claimant deposed to his averments in the demand notice, which notice was treated as the workman's claim statement. He testified to the statements made therein. He deposed that he was unemployed after termination and could not find a job elsewhere despite best effort. There was no rebuttal evidence so the Labour Court passed the award dated September 05, 2016 endorsed on October 13, 2016 in favour of the workman reinstating him to service with continuity and full back wages.

2. It is against this ex parte award that Horizon has approached

this Court by way of the present petition filed under Article 226 and 227 of the Constitution of India praying for a writ in the nature of certiorari quashing the impugned ex parte award and in the meantime they prayed for an interim order staying its operation.

3. In the writ petition Horizon admits that they received a communication dated August 24, 2015 from the Assistant Labour Commissioner Circle-4, Faridabad directing them to attend his office on September 03, 2015 at 11 AM for conciliation. They stated in para.4 that ALC Circle-4, Faridabad had no jurisdiction over the petitioner company and it is the Assistant Labour Commissioner, Circle-5, Faridabad who had the territorial jurisdiction to issue any communication/notice to petitioner Horizon. They admit that Rubber Marshall appeared before the ALC Circle-4, Faridabad. If Horizon was not the employer of the respondent-workman and had incurred no liability against him I fail to understand why did they not enter conciliation proceedings to deny the employer-employee relationship between Horizon and the workman. How would Rubber Marshall, a non-employer, know of what is happening in another establishment if the two had no connection whatsoever. I also fail to understand why Horizon did not appear before the Conciliation Officer and take the stand that they were not the employers and the demand notice was misdirected as against them. If this was done then the Assistant Labour Commissioner would have directed his inquiry elsewhere in order to first establish an employer-employee relationship between the trios before embarking on an attempt at settlement. Obviously, the petitioner Horizon and Rubber Marshall share a common workplace and identity and I would

lift the veil and hold that Horizon and Rubber Marshall are one and the same thing, both trying to wriggle out of the liability. In all probability, one is a partnership born out of Horizon, a Public Limited Company dealing in rubber products, both working in the same premises. How would Horizon know that Rubber Marshall had lent a sum of ₹ 10,000/- and emphatically state this in their petition which sum of money had to be repaid by the workman Sh. Chand Bhatti.

4. I would assume that they were both sister concerns for the purposes of the award and if the veil is lifted there would be complete identity in ownership. Horizon is also a company dealing in rubber. The demand notice was served on Horizon. The reference was made against Horizon. The award is against Horizon. If Rubber Marshall was so keen to step into the conciliation proceedings then it could have stepped into the reference proceedings and substantiated their case by producing evidence that employer-employee relationship did not exist despite the reference not being in their name. The demand notice was also not in their name. The attendance register and the Employees State Insurance Corporation downloads Annex P-6 collectively placed on record do not solve the mystery. Moreover, the petitioner has not challenged the reference order as bad in law or in fact. Nor has any effort made to first approach the labour court with an application to set aside the ex parte award. It is also not their case that the summons from the labour court were not served on them.

5. Proxy litigation has not only to be discouraged in this Court but has to be dealt with the firm hand. Impostors are prohibited from entering the portals of this Court. Neither can tricks be allowed to be played with the

Labour Court, and this Court. It is interesting that when Horizon makes averments which were not special to their knowledge, when they speak of Rubber Marshall. The affidavit in support of the writ petition verifies those paras/contents as true and correct to the knowledge of deponent Praveen Kumar Kapoor, as true and correct to his knowledge and based on information derived from the record. Whose record was M. Kapoor talking about? Horizon or Rubber Marshal? Which means presumptively that they were privy to each others record. If they were working in tandem to defeat the rights of the workman and deprive him of his claim then this is the last bastion from where they can expect relief.

6. The petitioner has not come to this Court with clean hands, clean mind, clean heart, clean motive, clean intention and clean objective. The manner in which both have acted; the conduct of Horizon before this Court in presenting this petition and the conduct of Rubber Marshall in conciliation proceedings and thereafter abandoning the proceedings before the Labour Court demand something more than just a mere dismissal of this petition and affirming the award. The rigours of the award need to be enhanced in order to do full justice to respondent-workman. The petitioner would not only entitled to reinstatement with continuity in service with full back wages from the date of termination but would also be entitled to 12% interest from the date of termination on the back wages till payment. Both Horizon and Rubber Marshall are held jointly and severely liable to implement the award. If the award is not implemented and payments made within three months from date of receipt of a certified copy of the order then interest would run at 18% per annum on amounts due, till realization. This

is the price of playing hide and seek with the authorities and the Court.

7. This petition is found to be a clever device to forestall the rights of the workman gained under the award and accordingly it is ordered to stand dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

18.01.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*