

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: April 19, 2017

(i) + **W.P.(C) 46/2015**

HOTEL LE-MERIDIEN C.J. INTERNATIONAL HOTEL
LIMITED Petitioner

Through: Mr. Shashank & Mr. Saurabh
Munjal, Advocates

Versus

HOTEL MAZDOOR UNION Respondent

Through: Mr. Ravindera S. Garia,
Mr. Shashank Singh & Mr. Maruf
Khan, Advocates

(ii) + **W.P.(C) 376/2015**

C.J. INTERNATIONAL HOTEL LIMITED Petitioner

Through: Mr. Shashank & Mr. Saurabh
Munjal, Advocates

Versus

HOTEL MAZDOOR UNION Respondent

Through: Mr. Ravindera S. Garia,
Mr. Shashank Singh & Mr. Maruf
Khan, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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C.M. 42154/2016 (u/S 5 of The Limitation Act) in W.P.(C) 46/2015

C.M. 42153/2016 (u/S 5 of The Limitation Act) in W.P.(C) 376/2015

There is delay of 28 days in filing the accompanying petitions.

Upon hearing, I find that averments made in these applications provide sufficient cause to condone the delay occasioned. Applications are allowed and delay is condoned.

The applications are disposed of.

W.P.(C) 46/2015 & C.M. 77/2015 & C.M. 2656/2015

W.P.(C) 376/2015 & C.M. 622/2015

1. In the above captioned two petitions, applications by respondent-workmen under Sub-Section 3 of Section 36 of *The Industrial Disputes Act, 1947* stand allowed vide order of 1st November, 2014 barring counsel for petitioner from appearing on behalf of management before the trial court.

2. Since the question involved in these two petitions are identical, therefore, with the consent of counsel for the parties, both these petitions have been heard together and are being decided by this common judgment.

3. Learned counsel for petitioner-Management assails impugned orders on the ground that counsel for petitioner had appeared before trial court on 28th January, 2013 and 28th February, 2013 but there was no opposition from respondent-Workmen Union which amounts to an implied consent and therefore, impugned order deserves to be set aside and petitioner be permitted to be represented by a counsel before the trial court. Reliance is placed by petitioner's counsel upon decision of a Coordinate Bench of this Court in *Samarendra Das Vs. M/S Win Medicare Pvt. Ltd.*, 2014 LLR 345 to submit that in a case of implied

consent to appearance of a legal practitioner, the bar of Section 36 (3) of *The Industrial Disputes Act, 1947* would not apply. In support of above submissions, reliance is placed by petitioner's counsel upon decisions in *Shiraz Golden Restaurant Vs. State of West Bengal & Ors.* (2000) 86 FLR 978 (Cal); *M/s Bhagat Brothers Vs. Paras Nath Upadhyay* LPA 212/2008; *B.M. Jambunathan Vs. United News of India (UNI) rep. by its General Manager & Anr.* (2008) 119 FLR 336 (AP); *Paradip Port Trust, Paradip Vs. Their Workmen* (1977) 2 SCC 339.

4. Learned counsel for respondent supports the impugned order and submits that decisions relied upon are not applicable to the facts of the instant case and that respondent is not being represented by any counsel before trial court and no consent, implied or express, was given for appearance of counsel on behalf of petitioner before trial court. So, it is submitted that these petitions deserve to be dismissed. Nothing else is urged on behalf of either side.

5. The legal position on the afore-noted aspect, as crystallized by a three Judge Bench of Supreme Court in *Paradip Port Trust, Paradip Vs. Their Workmen* (1977) 2 SCC 339, is as under:-

“26. A lawyer, *simpliciter*, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of the tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the tribunal in the capacity of an office-bearer of a registered trade union or an officer of associations of employers and no consent of the other side and leave of the tribunal will, then, be necessary.”

6. The afore-noted legal position holds good till date.

7. After having heard learned counsel for parties at length and on perusal of impugned order, material on record and the decisions cited, I find that on 14th December, 2012 counsel for both the sides had appeared and case was adjourned for arguments on the applications in hand i.e. under Section 36 of *The Industrial Disputes Act, 1947* . It is evident from the order sheet of 14th December, 2012 that no effective proceedings were conducted on the said date and presence of counsel was recorded in dual capacity i.e. as ‘Counsel and as Authorized Representative’. Since *vakalatnama* of counsel who had appeared on behalf of respondent was not taken on record, so recording of presence of Sh.S.N.Sharma in dual capacity i.e. as ‘Counsel and Authorized Representative’ would not justify petitioner’s representation by a counsel. It is so said because in trial court’s order sheet of 28th January, 2013 and 28th February, 2013 presence of counsel for petitioner has been recorded in dual capacity and not as a Counsel and even on these dates of hearing, no effective proceedings were conducted.

8. During the course of hearing, it was brought to the notice of this Court that Sh. S.N.Sharma had not appeared on behalf of respondent, as he had not been engaged by respondent and so, inference of implied consent can be raised and that on 14th December, 2012 filing of an application under Section 36 of *The Industrial Disputes Act, 1947* by respondent negates the plea of implied consent raised by petitioner’s

counsel. In such a situation, decisions relied upon by petitioner's counsel are of no avail to the case of petitioner.

9. In view of the aforesaid, this Court finds that impugned order does not suffer from any error apparent on the face of it. Accordingly, both the petitions and applications are dismissed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 19, 2017

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