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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 21st December, 2017

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W.P.(C) 2837/2015

KHEMCHAND

..... Petitioner

Through: Ms. Sonal Singh, Advocate

versus

M/S. PARVEEN STEELS

..... Respondent

Through: Mr. A.K. Pandey & Mr. Sunil Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

1. The petitioner has filed the present petition for setting aside the impugned Award dated 15.7.2014 passed by the Presiding Officer, Labour Court in LCA No.31/2011 titled Khem Chand v. M/s Parveen Steels.

2. The brief facts of the case, as stated in the Award dated 15.7.2014, are that the petitioner joined the Management as *Munim* in the year 1996 at last drawn monthly salary of Rs.8,000/- and at the time of joining, he was asked by the Management to deposit Rs.1,50,000/-, out of the amount he got after retirement from BSF as security in lieu of which he was assured to be given job along with a dividend of 20% which he did. During his services, the Management deducted Rs.5,000/- from his salary with assurance that total deposit amount will be released to him but in December 2008 and when he demanded for his deposit money, his services were terminated on 15.1.2010. The Management did not pay his deposited amount despite

his repeated visits till 15.10.2010 and he was also extended threats. The Management contested the claim by filing written-statement alleging therein that the Petitioner was never employed with them. It was submitted that in the year 1996, he advanced Rs.1,50,000/- to the Management as loan at interest @ 1% per month and in June 2011, all his dues were settled and the loan amount was paid to him.

3. Learned counsel for the petitioner submitted that the Labour Court erred in holding that there existed no relationship of employer and employee between the petitioner and the Management; that there was no prior adjudication upon the amount claimed; that the present claim not only includes the non-paid salary and other dues, which could not be proved by the Petitioner, but also the loan amount. Learned counsel for the petitioner has relied on the reply dated 18.12.2008, wherein, it is urged that the respondent has admitted that the benefit as well as right accrued in favour of the petitioner to file a petition under Section 33(c)(2) of the Industrial Disputes Act, 1947. On the other hand, learned counsel for the respondent has relied upon the impugned Award and has submitted that the claim of the petitioner under Section 33(c)(2) was not maintainable as there was neither any relationship of employer and employee nor was anything due or acknowledged to be due by the respondent.

I have gone through the demand notice (Ex.WW-1/3) dated 1.12.2008 sent on behalf of the Workman, wherein it is stated that – “I, therefore, on behalf of my aforesaid client call upon you, the addressee that my client has withdrawn thereby dissolved the partnership at will with immediate effect and further call upon you the addressee to return the capital amount of Rs.1,52,120/- and in as

much as the amount of 20% of the profit of the aforesaid firm/HUF for the period from 1996 to December, 2008 within statutory period provided by law from the receipt of this legal notice (civil and criminal-both) action against you and other HUF members of the aforesaid firm to claim his rights, interests and amount accrued to my client upto December, 2008. Copy of this legal notice is kept in my office for further necessary action. Please take a note of it.”

4. The demand notice, which is a basic document for the purpose of initiating the proceedings against a person or establishment narrates entirely a different story whereby the petitioner has called upon respondent to return the capital amount of Rs.1,52,120/-. The notice stated entirely a different version than what is stated in the Statement of Claim under Section 33(c)(2) filed by the petitioner. Learned counsel for the petitioner has harped upon the reply (Ex.WW-1/1) dated 18.12.2008 of the Respondent Management, but there is nothing on record which may, in any manner, prove that the Management has acknowledged any benefit or right, on the basis whereof it can be said that any benefit or right accrued in favour of the petitioner to file a petition under Section 33(c)(2) of the Industrial Disputes Act, 1947.

5. I do not find anything on the record, whereby it can be conclusively held in any manner that there was any relationship of employer and employee between the petitioner and the respondent. It is also an admitted position that there was no prior adjudication regarding the amount claimed by the petitioner against the Management. The notice (Ex.WW-1/1) itself contradicts what is stated in the statement of claim as well as arguments addressed by

learned counsel for the petitioner regarding non-payment of salary or other dues. If any amount was paid by the petitioner, as demanded in the notice (Ex.WW-1/3), the remedy was not under Section 33(c)(2) of the Industrial Disputes Act, 1947. The petitioner ought to have availed other remedies available under the civil law of the land for this purpose, at that time.

I am not able to find any infirmity or flaw in the impugned Award of the Labour Court dated 15.7.2014. The petition is dismissed. Parties are left to bear their own costs.

CHANDER SHEKHAR, J

DECEMBER 21, 2017

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