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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5786/2017 & CM APPL. 24115/2017
BRIJ & COMPANY Petitioner
Through Mr. Satender Verma, Advocate

versus

BRIJ KISHORE Respondent
Through Nemo.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **12.07.2017**

Initial submissions made on behalf of the petitioner.

Vide the petition, the petitioner seeks to assail the impugned Award dated 09.06.2016 of the learned Labour Court No. IX, Karkardooma Courts, Delhi in LIR no. 3345/2016, whereby the reference sent by the Deputy Labour Commissioner, Labour Court, District North-West, Government of the National Capital Territory of Delhi, Delhi referred to the Labour Court No. IX, Karkardooma Courts, Delhi vide notification no. F.24/ID/893/14/NWD/76/15/Lab/378-82 dated 25.03.2015 to the effect whether the services of the workman Sh. Brij Kishore s/o Sh. Jamana Prasad, arrayed as respondent in the present petition had been terminated illegally and unjustifiably by the management / the petitioner herein in as much as vide the impugned Award dated 09.06.2016, it was observed to the effect that the workman/ the respondent herein had unrebuttedly established that his services had been illegally terminated by the management.

Vide the impugned Award dated 09.06.2016 as the services of the

workman / the respondent herein were reported to have been terminated about two years prior to the award dated 9.6.2016 and it was observed by the learned Labour Court to the effect that he would have joined some other management as no one can remain idle for two years, it was deemed appropriate to grant compensation to the workman / the respondent herein to the extent of 50% of his last drawn salary or 50% of the Minimum Wages whichever is higher from time to time from the date of his termination upto the date of the award in lieu of the reinstatement, back wages and all other consequential benefits.

The perusal of the impugned Award 09.06.2016 indicates categorically that repeated opportunities were granted for the presence of the management, i.e., the petitioner herein, but the management, i.e., the petitioner herein chose not to appear despite service on 31.07.2015 before the learned Labour Court No. IX, Karkardooma Courts, Delhi, nor did it file any written statement and the defence of the management / the petitioner herein was struck off vide order dated 03.12.2015 and the matter was adjourned for workman evidence. The impugned Award 09.06.2016 itself indicates that an opportunity was granted to the management i.e. the petitioner herein for management evidence even after absence of the management / the petitioner herein but despite the same, no evidence was led by the management / the petitioner herein and the management evidence was closed on 30.05.2016. Thereafter, the matter was adjourned for final arguments. As per the impugned Award dated 09.06.2016, after arguments were addressed on behalf of the workman / the respondent herein, as the management i.e. the petitioner herein had not appeared in the matter, the case was adjourned for orders giving liberty to the management, i.e., the

petitioner herein to advance oral arguments, if any, or to file written submissions before the date fixed for orders but none had appeared on behalf of the management,i.e.,the petitioner herein.

Through the present writ petition, it has been submitted to the effect that the lapse in appearance before the learned Labour Court No. IX, Karkardooma Courts, Delhi in LIR no. 3345/2016 was due to the factum, that the management, i.e., the petitioner herein was served with a notice on 31.07.2015 and immediately the management, i.e., the petitioner herein sent the notice alongwith the mail dated 31.07.2015 to its counsel and that the copy of the letter dated 31.07.2015 and email are annexed with the present writ petition. It has been submitted on behalf of the management / the petitioner herein to the effect that the said counsel was looking after the legal matters of the management / the petitioner herein since 1996 and the management, i.e., the petitioner herein remained under the bonafide belief that the counsel had been taking and had taken the proper care of the matter but the matter was not attended by the counsel.

It has been submitted through the writ petition that a demand notice dated 14.12.2016 was received by the management, i.e., the petitioner herein from the Advocate apparently of the workman,i.e, the respondent herein in relation to the passing of the Award dated 09.06.2016 whereafter the management, i.e., the petitioner herein apprised its counsel and of this information of the present Award in as much as the workman, i.e, the respondent herein had initiated the recovery proceedings.

It is essential to observe that as indicated in the impugned Award dated 09.06.2016 itself that from the date of service of the demand notice on 31.07.2015 to the management, i.e., the petitioner herein, repeated

opportunities were granted for the presence of the management, i.e., the petitioner herein but the management, i.e., the petitioner herein chose not to appear despite service on 31.07.2015 before the learned Labour Court No. IX, Karkardooma Courts, Delhi, nor did it file any written statement and despite an opportunity for leading management evidence and for addressing arguments being apparently available the management, i.e., the petitioner herein chose not to make any effort whatsoever even to ascertain about the fate of the proceedings before the learned Labour Court No. IX, Karkardooma Courts, Delhi in LIR No. 3345/2016 after 31.07.2015.

Apart from the same, it is essential to observe on a perusal of the impugned Award dated 09.06.2016 and taking into account the period of work rendered by the workman / the respondent herein with the management being beyond 240 days and the factum of the termination of services of the workman being without any notice pay, charge sheet, retrenchment compensation by the management and it is brought forth categorically to the effect that the services of the workman, i.e., the respondent herein had been illegally terminated. Taking the said aspect into account, it is held that there is no infirmity in the impugned Award dated 09.06.2016 and thus there is no ground for setting aside the same.

The W.P.(C) 5786/2017 and its accompanying application CM No.24115/2017 seeking a stay of the operation of the impugned award are dismissed.

ANU MALHOTRA, J

JULY 12, 2017/mk