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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 11945/2016, CM APPL. 47082/2016
OM PRAKASH Petitioner
Through Mr. Anil Sehgal, Adv.

versus

MD. MOHIM Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **20.09.2017**

The respondent is absent despite due service of the court notice issued to the respondent in terms of the order dated 23.08.2017, which notice has been served to the respondent through Bhartiya Engineering Tatha Mazdoor Union (Regd. 3606), Bharat Mill, Charkhi Gate, Near D-Block, Karampura, New Delhi – 15 on 05.09.2017 through its Dealing Authority Mr. Umesh Kumar and the stamp of the said Union is also visible on the said court notice issued to the respondent through its Union with signatures of the Dealing Authority Mr. Umesh Kumar. Thus, the respondent is held to be duly served with the court notice issued in terms of the order dated 23.08.2017.

Vide the present petition W.P. (C) 11945/2016, the petitioner had assailed the impugned Award dated 29.09.2016 of the Authority Under the Delhi Shops and Establishment Act, 1954 whereby the petitioner herein had been directed to make the payment of the sum of Rs.20,340/- to the claimant Md. Mohim i.e. the respondent herein to the present petition alongwith the
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payment of the compensation amount to Rs.4,000/-, which order was made in terms of the Section 21(3) of the Delhi Shops and Establishment Act, 1954, it having been observed to the effect that wages were due for the period from 01.10.2012 to 08.12.2012 to the workman.

During the course of the present proceedings, vide order dated 23.12.2016 when notice of the petition was issued to the respondent, the operation of the said impugned order dated 29.09.2016 was stayed subject to deposit of the amount payable in terms of the impugned order with the Registrar General of this Court and as indicated as per part B of the record, the Demand Draft no. 201267 dated 06.01.2017 for Rs.24,340/- was deposited by the petitioner in compliance of the directions dated 23.12.2016, which is now in an automatic renewal mode.

The respondent was represented on the date 10.04.2017 on which date, the matter was referred to the Delhi High Court Conciliation and Mediation Centre for the dated 21.04.2017 and the matter was renotified for 23.08.2017 for reporting the outcome of the mediation.

For the date 23.08.2017 as reported on the record, a settlement agreement dated 07.07.2017 arrived at the Delhi High Court Conciliation and Mediation Centre between the petitioner herein and the respondent was found placed on the record. On the date 23.08.2017, through the Authorized Representative of the petitioner Mr. Shivendu was present, the respondent was however not present.

As per the said mediation settlement agreement dated 07.07.2017, it had been stated in paragraph 4 thereof to the effect that:-

“4. That the following cases are pending between the

parties:-

- a. Civil Suit Bearing No. 8364/16 pending before Sh. Dharmender Singh, Ld. Civil Judge, Tis Hazari Courts, Delhi titled as Om Prakash Vs. Md. Mohim filed by the first party against the second party for recovery of Rs.60,000/- and the next date of hearing is 27.07.2017.*
- b. Industrial Dispute filed by the second party against the first party which is presently pending before Smt. Kiran Bansal, Ld. Presiding Officer, Labour Courts, Karkardooma Courts, Delhi as ID No. 4865/16 titled as Md. Mohim Vs. Shiv Indu Industries.*
- c. W.P. (C) No. 11945/2016 filed by the first party presently pending before the Hon'ble High Court of Delhi”*

The said mediation settlement also incorporates that there were mediation sessions also on 21.04.2017, 23.05.2017 and 07.07.2017 and that the parties had arrived at voluntarily at an amicable solution resolving the said disputes mentioned in paragraph 4 of the settlement agreement and had arrived at a settlement of their own free will as recorded in paragraph 6 of the said settlement agreement. The terms of the said settlement agreement are detailed in paragraph 7 of the said mediation settlement agreement, which are to the effect that : -

“7. The following settlement has been arrived at between the parties hereto : -

- a). That it is agreed that all the case will be*

withdrawn by the parties filed.

b). That the first party shall pay to the second party a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards full and final settlement of all the claims of the second party against the first party. After the receipt of the above mentioned settlement amount of Rs.30,000/- (Rupees Thirty Thousand only), the parties shall have no claim of any nature whatsoever against each other.

c). That it is agreed between the parties that within one week of signing of the present Settlement Agreement, the Second Party shall withdraw the Industrial Dispute as ID No. 4865/16 pending before Smt. Kiran Bansal, Ld. Presiding Officer, Labour Courts, Karkardooma Courts, Delhi titled as “Md. Mohim Vs. Shiv Indu Industries”. The above mentioned settled amount of Rs.30,000/- (Rupees Thirty Thousand only) shall be paid by the first party to the second party by way of demand draft in favour of the Second Party, on the date of withdrawal of the ID Case filed by second party against the first party.

d). That the First Party had deposited a sum of Rs.24,340/- before the Registrar General, Delhi High Court as per the directions of this Hon’ble Court. It is agreed between the parties that the above mentioned amount of Rs.24,340/- along with accrued interest thereon may be released in favour of the first party and the second party has no objection in this

regard.

e). That it is agreed between the parties that the present W.P. (C) No. 11945/2016 may be disposed of in terms of the present settlement agreement”.

In terms of the said Settlement Agreement dated 07.07.2017 vide clause 7(b) of the same, a sum of Rs.30,000/- was to be paid by the first party, who is also the petitioner to the present petition towards full and final settlement of the claims of the second party i.e. the respondent herein and it was however stated through the said settlement agreement that after receipt of the said amount of Rs.30,000/- by the second party i.e. the respondent herein, the parties would have no claim of any nature whatsoever against each other.

Vide clause 7(c) of the said settlement agreement dated 07.07.2017, it is indicated that the second party i.e. the respondent herein was to withdraw the ID No. 4865/16 pending before Smt. Kiran Bansal, Ld. Presiding Officer, Labour Courts, Karkardooma Courts, Delhi titled as “Md. Mohim Vs. Shiv Indu Industries and that the said amount of Rs.30,000/- was to be paid by Om Prakash, Proprietor of M/s. Shiv Indu Industries to the second party i.e. the respondent herein by way of demand draft in favour of the second party on the date of the withdrawal of ID No. 4865/16 case filed by the second party against the first party.

Learned counsel for the petitioner has submitted the certified copy of the Award dated 12.07.2017 in I.D. No. 4868/16 of the Labour Court –XI, Karkardooma Courts, Delhi and the certified copy of the proceedings dated 12.7.2017 and statements dated 12.7.2017 of Mohd. Mohim, the respondent

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and of Mr. Shivendu s/o Mr. Om Prakash on behalf of management.

As per the said proceedings dated 12.07.2017 in I.D. No. 4868/16, the sum of Rs.30,000/- in terms of clause 7(b) of the settlement agreement dated 07.07.2017 was paid by the management to the workman vide Demand Draft no. 201267 dated 06.01.2017 for Rs.24,340/- drawn on ICICI Bank, Delhi Rohtak Road, Delhi and certified copy of the said demand draft has also been submitted on behalf of the petitioner along with the certified copy of the settlement agreement dated 07.07.2017, original of which is before this Court, the certified copy of which is Ex.P1 as per the proceedings in I.D. No. 4868/16 of 12.07.2017 of the Labour Court –XI, Karkardooma Courts, Delhi. It has been submitted through statement dated 12.07.2017 of Mohd. Mohim s/o Mohd. Razzak arrayed as respondent to the present petition as follows : -

“I am workman in the present case. I have settled the present matter with the management for a sum of Rs.30,000/- as full and final settlement before Mediation Centre, Hon’ble High Court of Delhi vide settlement agreement dated 07.07.2017 i.e. Ex.P1 alongwith other case pending before the High Court of Delhi. In compliance of the above settlement, I have received the full and final payment of Rs.30,000/- from the management by way of DD baring no. 201267 dt. 11.07.2017 drawn on ICICI Bank, Delhi Rohtak Road. After receiving the full and final settlement amount, nothing is left due on the part of the management in the present matter. Photocopy of the DD also placed on record with settlement documents. I am making my statement voluntarily and same is without any force or

coercion.”

which statement is categorical to the effect that he had settled the matter i.e. I.D. No. 4868/16 of the Labour Court –XI, Karkardooma Courts, Delhi with the management for a sum of Rs.30,000/- as full and final settlement before the Mediation Centre at the High Court of Delhi vide Settlement Agreement dated 07.07.2017 Ex.P1 and along with the other case pending before the High Court of Delhi.

“I am son of proprietor of the management. The matter is settled with the workman for a sum of Rs.30,000/- as full and final settlement before Mediation Centre, Hon’ble High Court of Delhi vide settlement agreement dated 07.07.2017 i.e. Ex.P1 alongwith other case pending before the High Court of Delhi. In compliance of the above settlement, I have handed over full and final payment of Rs.30,000/- to the workman by way of DD bearing no. 201267 dt. 11.07.2017 drawn on ICICI Bank, Delhi Rohtak Road. Now nothing is left due on the part of the management in the present matter. Photocopy of the DD also placed on record with settlement documents. I am making my statement voluntarily and same is without any force or coercion”

Vide proceedings dated 12.07.2017, it was observed by the Labour Court –XI, Karkardooma Courts, Delhi to the effect that a settlement had been arrived at between the parties, hence, no relief was required to be granted to the workman and the said reference was answered accordingly. The Award of settlement was thus passed.

Vide clause 7(d) of the settlement agreement dated 07.07.2017 arrived
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at between the parties, it has been agreed between them that a sum of Rs.24,340/- deposited by the first party to the said settlement agreement i.e. petitioner herein before the Registrar General, High Court of Delhi in terms of the directions of this Court, had been agreed to be released alongwith the accrued interest thereon in favour of the first party i.e. the present petitioner and that the second party i.e. the respondent herein had no objection in this regard and that it was agreed between the parties vide clause 7 (e) of the said Settlement Agreement that W.P.(C) 11945/2016 i.e. the present petition be disposed of in terms of the said settlement agreement.

Vide clause 7(a) of the said settlement agreement, it has also been agreed that the cases would be withdrawn by the parties filed against each other. Certified copy of the settlement 12.07.2017 in I.D. No. 4868/16 of the Labour Court –XI, Karkardooma Courts, Delhi of the respondent categorically states that he had made the statement voluntarily without any force and coercion and furthermore, vide clause 8 of the said settlement agreement, it has been agreed between the parties that there were no further claims and demands against each other and all the disputes and differences had been amicably settled by the parties and they undertook vide clause 9 of the said Settlement Agreement to abide by the terms and conditions set out in the said settlement agreement and not to dispute the same in future. Vide clause 10 of the said Settlement Agreement, both the parties stated that they had understood the contents of the settlement agreement, which had been read over to both the parties in vernacular.

Vide clause 7(d) of the said settlement agreement, the sum of Rs.24,340/- deposited by the first party i.e. the petitioner before the

Registrar General, Delhi High Court along with the accrued interest thereof, was to be released to the petitioner and thus it was considered essential that the respondent be present. The respondent however despite due service of the court notice has chosen not to appear.

In view thereof as there is nothing on the record to disbelieve that the said settlement agreement dated 07.07.2017 between the parties, which is established to have been settled into in view of the factum that the sum of Rs.30,000/- in terms of the clause 7(d) of the said settlement agreement has admittedly been received by the respondent as indicated by the certified copy of the order dated 12.07.2017 in I.D. No. 4868/16 of the Labour Court –XI, Karkardooma Courts, Delhi, it is considered appropriate to accept the settlement agreement dated 07.07.2017 received from the Delhi High Court Mediation and Conciliation Centre as there appears to be no illegality in the same, which is thus accepted.

In view thereof, Rs.24,340/- deposited by the petitioner in terms of the order dated 23.12.2016 along with the interest accrued thereon till date is allowed to be released to Mr. Shivendu s/o Mr. Om Prakash, Proprietor of M/s. Shiv Indu Industries on production of proof of identification before the Registrar General, Delhi High Court.

In view thereof, learned counsel for the petitioner seeks to withdraw the W.P.(C) 11945/2016, which is thus dismissed as withdrawn.

ANU MALHOTRA, J

SEPTEMBER 20, 2017/mk