

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05-07-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.13440 and 13441 of 2013

And

M.P.No.1 of 2013

The Management of
UNIVERSAL TRADING COMPANY
3, Arunodhya Apartment,
C-Block, 2nd Street,
Medley Road, T.Nagar,
Chennai-600 017.

... Petitioner in both WPs

Versus

1.C.Subbiah

rep by G.Nanda Kumar Authorised representation
for Petitioner

...1st respondent in WP.13440/13

2.The Presiding Officer,
II Additional Labour Court,
Chennai.

...2nd Respondents in both Wps

C.Subbiah

... 1st Respondent in WP.13440/2013

PRAYER: Writ petitions are filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorari, calling for the records and quashing the orders dated 4.1.2013 and 10.1.2013 passed by the second respondent in I.A.No.354/2012 in C.P.No.1879/2011 and in C.P.No.1879/2011.

For Petitioner in both WPs : Mr.Manoj Sreevalsan

For Respondent-1 in both Wps : No Appearance

C O M M O N O R D E R

The relief sought for in these writ petitions is to call for the records and quash the orders dated 4.1.2013 and 10.1.2013 passed by the second respondent in I.A.No.354 of 2012 and

C.P.No.1879 of 2011 respectively.

2. The first respondent-workman filed C.P.No.1879 of 2011 before the second respondent to compute the value of the amounts due to him at Rs.70,119/- with interest at 9% under Section 33-C (2) of the Industrial Disputes Act, 1947.

3. The learned counsel, appearing on behalf of the writ petitioner, made a submission that notice was received by the writ petitioner and Vakalath was filed on 23.1.2012 before the second respondent. Subsequently, the case was listed for hearing on several dates and on 7.8.2012, the second respondent set the writ petitioner ex parte as the counter was not filed in the claim petition. The case was listed for taking ex parte evidence. Under these circumstances, the writ petitioner filed I.A.No.354 of 2011 in C.P.No.1879 of 2012 to condone the delay of 86 days in filing the set aside petition. The said petition was taken up on 1.11.2012. However, the petition was returned for compliance and the case was listed on 20.11.2012. The entries in the 'A' Diary maintained by the second respondent are extracted hereunder:

Hearing Date	Entry in Court 'A' Diary
01/11/2012	C.P.1879 of 2011. The respondent filed an application to set aside and the same is returned. Call on 20/11/2012.
20/11/2012	I.A.No.354 of 2012. Notice given. Counter statement by 07/12/2012.
07/12/2012	P.O. on leave. Reposted to 19/12/2012.
19/12/2012	I.A.354 of 2012 is pending. Call on 04/01/2013
04/01/2013	I.A.354 of 2012 is dismissed. For orders by 10/01/2013.

4. The grievance of the writ petitioner is that when the writ petitioner applied for a copy of the order passed on 15.3.2013, the writ petitioner came to know that I.A. was dismissed on the ground that 'cost not paid'. On verification of the 'A' Diary, once again by the writ petitioner, it was found that there was no reference about any costs being ordered on 19.12.2013. Thus, there was no mistake on the part of the writ petitioner in not paying the cost amount as stated in the impugned order.

5. The learned counsel, appearing on behalf of the writ petitioner, made a submission that the counsel, who appeared before the Labour Court, was not aware of any such costs imposed by the Labour Court. Thus, the non-payment of costs, if at all, imposed was unintentional and it was by mistake.

6. This Court is of an opinion that a mistake of fact or unaware of the order, if any passed in respect of imposition of costs, the merits and the demerits of the case shall not be affected. Even otherwise also, the mistake committed by the counsel appearing for the respective parties should not cause any injury to the litigants at large. Such condonable mistakes are to be pardoned and the parties must be given an opportunity to adjudicate the matter on merits and in accordance with law.

7. The Courts have repeatedly held that on account of certain mistakes committed by the learned counsel appearing for the respective parties, the litigants should not suffer or no injury shall be caused to the merits of the case. All issues are to be decided on its own merits and demerits. This being the principles to be followed, this Court is of an opinion that the order passed by the II Additional Labour Court, Chennai deserves to be set aside.

8. Accordingly, the orders impugned dated 4.1.2013 and 10.1.2013 respectively passed by the second respondent in in I.A.No.354/2012 in C.P.No.1879/2011 and in C.P.No.1879/2011 are quashed and the second respondent is directed to take the CP No.1879 of 2011 on file and adjudicate the same by providing opportunity to all the parties concerned and decide as early as possible, without causing any undue delay.

9. Accordingly, the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

Svn

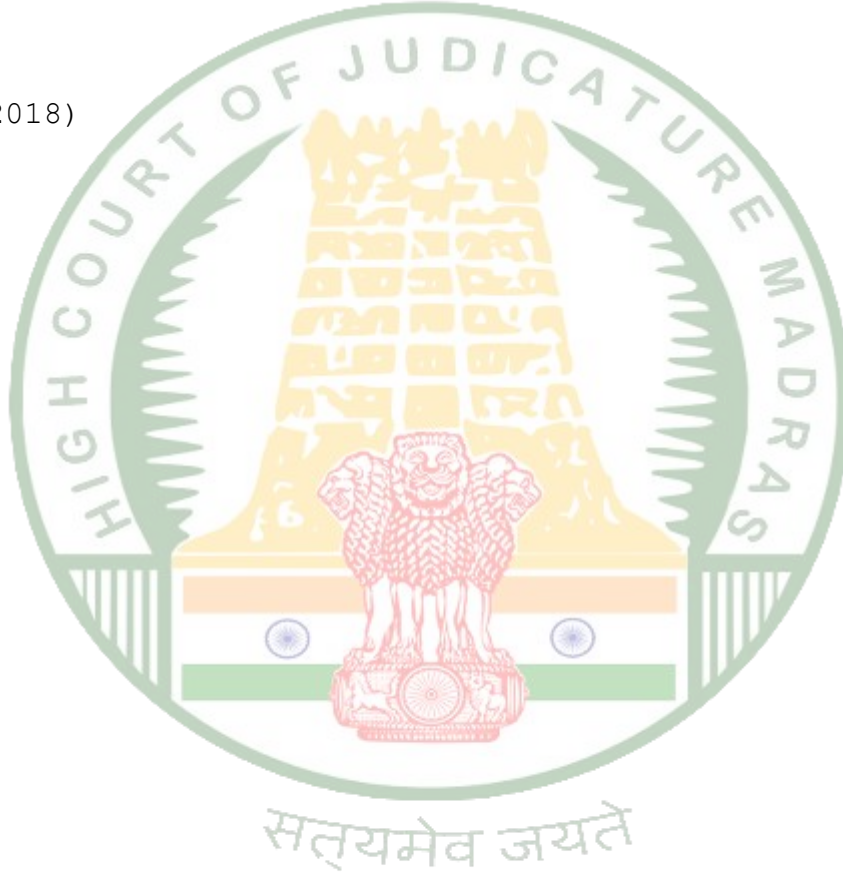
To

The Presiding Officer,
II Additional Labour Court,
Chennai.

+2cc to Mr.Manoj Sreevatsan, Advocate SR.No.43682, 43681

WPs 13440 & 13441 of 2013

SVI (CO)
GN(18/07/2018)



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