

CR No.1606 of 2018

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.1606 of 2018

Date of decision:09.03.2018

Voith Paper Fabrics India Limited

... Petitioner

Vs.

Sat Pal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Pawan Kumar Mutneja, Advocate
for the petitioner.**

AMIT RAWAL J. (Oral)

The petitioner-Management has approached this Court under Article 227 of the Constitution of India for setting aside the order dated 22.02.2018 (Annexure P-4).

The facts leading to passing of the impugned order in short are that workman-Sat Pal Singh sought reference before the Court which was numbered as R/9/2007 registered on 22.03.2007, whereby, challenge was laid for non-compliance of the provisions of the Industrial Disputes Act, 1947 (in short "1947 Act"). The Labour Court on preponderance of the evidence, vide award dated 19.12.2012 allowed the reference in favour of the workman by directing the management to re-instate him with full back wages, continuity of service and other consequential benefits within a period of two months of publication and cost was assessed to the tune of ₹2,000/-.

It has been pointed out that many other similarly situated workmen had also preferred reference which was also allowed by the same order and 15 writ petitions were filed before this Court. During the pendency of the writ petitions, this Court, vide order dated 28.04.2014 had stayed the prosecution of the company.

Mr. Pawan Kumar Mutneja, learned counsel appearing on behalf of the petitioner submitted that respondent-workman has been served in the writ petitions which is pending adjudication in the month of April, 2018. However, during the pendency of the writ petitions, an execution application dated 22.03.2017 (Annexure P-2) has been filed in which application dated 20.09.2017 (Annexure P-3) for stay of the execution proceedings as per the order of this Court, was filed, wherein, it was stated that this Court had already stayed the prosecution/execution of the award, therefore, execution application was not maintainable and liable to be stayed till the final order in the writ petitions is passed by this Court. It is also stated that award of the Labour Court remains in operation for a period of one year only as per Section 19(3) of 1947 Act and therefore, it has ceased to be in operation. The aforementioned application was dismissed by the trial Court, vide impugned order dated 22.02.2018. It is in that background of the matter, present revision petition has been filed.

In support of the grounds raised in the revision petition, Mr. Mutneja, has raised the following submissions:-

- i) With effect from 15.09.2010, award of Labour Court has to be treated as if it were a decree of the Civil Court as per the

provisions of Section 11(10) of 1947 Act.

ii) Relied upon the provisions of Order 21 Rule 11(2), to contend that in execution application, decree holder is required to comply with the same, whereas, the execution application is bereft of the same and thus, the same was not maintainable and the procedure prescribed for entertaining and proceedings on receipt of the execution application in terms of provisions of Order 21 Rule 17, was silent with regard to the amount due.

iii) The workman did not join in pursuance to the award, and therefore, the adverse inference was liable to be drawn against him. There is a difference between 'award' and 'conclusive decree' and therefore, the Court below could not have dismissed the application and fixed the matter calling upon the decree-holder to give the list of properties and permit the objector to file the objections, if any, thus, the order is erroneous, capricious and liable to be set aside.

I have heard the learned counsel for the petitioner and appraised the paper book.

The facts noticed above with regard to passing of the award, pendency of the writ petitions, much less, interim order dated 28.04.2014 passed by this Court, are not in controversy. For the sake of brevity, the order dated 28.04.2014 reads as under:-

“Counsel for the respondent-workman prays for time to file replies (in all cases).”

Let the needful be done before the next date of hearing, with copies in advance to the counsel opposite.

Adjourned to 28.07.2014.

In the meantime, prosecution of the petitioner-Company shall remain stayed.

Photocopy of this order be placed on the record of each connected case.”

In my view, on receipt of the execution application, a fresh cause of action had accrued in favour of the petitioner to move an interim application in the pending writ petitions to seek stay of execution of the award but not in the manner and mode by seeking the stay of the execution of award and that too by taking the aid of the pendency of the writ petitions.

It would be in the fitness of things to refer to paragraphs 1, 2 and 3 of the application which read as under:-

“1. That the learned labour court has passed 15 identical awards on 15.12.2012 in the matter of different references. The awards were passed in favour of 15 workmen. The respondent management filed Civil Writ Petitions No.CWP No.13345, 13349, 13351, 13353, 13355, 13357 to 13363, 17741, 17456 and 18019 of 2013. All these above writ petitions have been heard together and the common proceedings are taking place before the Hon'ble High Court and the same and similar zimni orders are passed in all the writ petitions. The present applicant is one of such employee in whose favour the award

was passed and now against the award civil writ petition has been filed and pending before the Hon'ble High Court. The applicant is appearing before the Hon'ble High Court through his counsel. The same date of hearing is fixed in all the writ petitions.

2. *That the Hon'ble Punjab & Haryana High Court has passed similar order dated 28.04.2014 staying the prosecution/execution of the award. A copy of the order of the Hon'ble High Court, taken from the website of Punjab & Haryana High Court is attached herewith for the perusal of this Hon'ble Court.*

3. *In view of the stay of the High Court order, the present application of Execution Petition is not maintainable and is liable to be stayed till the final order of these writ petitions by the Hon'ble Punjab & Haryana High Court.”*

The pith and substance of the application would reveal that trial Court was confronted with the pendency of the writ petitions and stay order. Previous to the amendment caused in sub-sections 9 and 10 of Section 11 of 1947 Act, the workman was required to approach the Conciliation Officer for execution of the award or had an independent right, in case the conclusive determination would only be after the amount was determined under Section 33C(2) of 1947 Act. It is in that background, the trial Court was seized of the execution application. I would be refraining myself to further comment as it would take away the right of the petitioner to file the

objections but fact of the matter is that petitioner has remedy elsewhere but not in the manner and mode as indicated above.

No ground is made out for interference in the impugned order.

Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 09, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No