

(116) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6667 of 2018

Date of decision: 21.12.2018

Tota Ram

.... Petitioner

Versus

M/s Xpro India Limited

..... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Diwan S. Adlakha, Advocate for the petitioner.

B.S. Walia, J.

[1] Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside order dated 01.06.2018 (Annexure P-7) passed by the learned Labour Court-II, Faridabad allowing the application filed by the respondent/defendant for framing of additional issues.

[2] On the basis of pleadings of the parties, the learned Labour Court-II, Faridabad framed the following issues vide order dated 16.10.2017 (Annexure P-4) and fixed the case for evidence of the plaintiff for 06.12.2017.

“1. Whether the termination of the services of workman Sh. Tota Ram is illegal, if so, to what relief he is entitled? OPW.

2. Whether the present claim statement is not maintainable, as alleged? OPM.

3. Relief.”

Thereafter, the petitioner got examined himself as WW1 on 06.12.2017. The respondent-Employer/Management got deferred the petitioners cross-examination for 01.02.2018. After cross-examining the petitioner, the respondent-Employer/Management moved an application on 19.03.2018 for framing of two additional issues by stating in para No. 4 of the application that it had filed the written statement on 04.09.2017 taking up the plea in para No.1 of the preliminary objections that the Unit was closed w.e.f. 23.11.2016 as per the provisions of Section 25 (FF) of the Act and payment was also made to the petitioner/claimant as per the provisions of Section 25 (FFF) of the Act and that the amount of cheque which was paid towards full and final settlement to the petitioner/claimant was debited from the account of the respondent-Employer/Management.

[3] Reply was filed to the application by the petitioner on 16.04.2018 taking up the stand that the application had been filed by the respondent-Employer/Management just to delay the proceedings and the application was not maintainable especially when the evidence of the workman had already been recorded. In reply to the contents of Para No.4 of the application, the petitioner specifically stated that in Para No.1 of the preliminary objection of the written statement, the respondent-Employer/Management had taken an objection that the claim application under Section 2A (ii) of the Act was not maintainable in the eyes of law and in respect thereto, the Labour Court had already framed issue No.2 as to “whether the present claim statement is not maintainable as alleged?”. The petitioner also took up the plea that the respondent-Employer/Management nowhere pleaded in the written statement that the Factory had been closed.

[4] Learned counsel contended that the learned Labour Court-II,

to the written statement wherein the petitioner had categorically stated that the respondent-Employer/Management had not closed down the Factory in routine rather the same was with the intention to terminate the work as well as services of the petitioner/workman under the pretext of closure. In other words, the petitioner had not denied the closure rather had challenged justification for the closure, therefore, the proper issue which was required to be framed was “whether the closure of Unit by the respondent-Employer is justified or not?”

[5] Likewise, the petitioner had categorically stated in the rejoinder that the amount in cheque was received by the workman under protest, besides, respondent-Employer/Management had nowhere pleaded in the written statement that closure benefits were paid, therefore, without such pleadings, issues framed by the learned Labour Court-II, Faridabad, were wrong and illegal. Besides, the learned Tribunal/Labour Court had framed the additional issues without taking into account the fact that the petitioner-workman had examined himself as WW1 before the date of application for recasting of issues, therefore, the impugned order for framing of additional issues ought not to have been passed.

[6] The learned Labour Court-II, passed the impugned order by observing that perusal of paragraph No.2 of the preliminary objections of the written statement filed by the respondent revealed the plea of Management having closed down the Unit w.e.f. 23.11.2016 as per the provisions of the Act while in para No.3 of the preliminary objections of the written statement, it had been pleaded that the Management had paid full and final (payment) including all legal dues vide cheque No.003561 dated 24.11.2016 amount to Rs.6,58,800/- (Rupees Six Lacs Fifty Eight thousand and Eight

and that the petitioner/claimant had deposited the cheque in his account, which was debited from the Bank. In the circumstances, the following two additional issues were framed:-

“2(a) Whether the respondent had closed down its unit w.e.f. 23.11.2016 as per provisions of the Industrial Disputes Act, 1947? OPR

2 (b) Whether the respondent had paid full and final closure benefits to the workman? OPR”

[7] Plea of the petitioner is that it had nowhere been pleaded in the written statement that the factory had been closed, therefore, the application was not maintainable, whereas perusal of impugned order reveals the stand of the respondent-Employer/Management in paragraph No.2 of the preliminary objections of the written statement of having closed down the Unit w.e.f. 23.11.2016 as per the provisions of the Act. Additional issue which has been framed is strictly in consonance with the stand of the Management in paragraph No.2 of the preliminary objections of the written statement which stand has been controverted and denied by the petitioner/workman in the rejoinder filed to the written statement.

[8] Likewise, additional issue No.2 (b) framed by the learned Labour Court is in consonance with paragraph No.3 of the preliminary objections of the written statement of the respondent-Management having paid full and final including all legal dues vide cheque No.003561 dated 24.11.2016 amount to Rs.6,58,800/- (Rupees Six Lacs Fifty Eight thousand and Eight Hundred only) drawn on HDFC Bank Ltd., B.K. Chowk, NIT, Faridabad and which was debited from the account of the respondent-Employer/Management which fact was admitted by the petitioner/workman

up the stand that the amount in cheque was received by the workman by post under protest.

Even otherwise perusal of para Nos.4 to 9 of the written statement (reply on merits) reveals that management-respondent had taken a categorical stand that the closure of unit and full and final payment in respect of dues had been made as per provisions of the Act. These averments were denied in the rejoinder to the written statement filed by the Workman, therefore, the finding qua the facts specifically alleged by one party and denied by the other party in its pleadings has to be made only after making specific issues and taking evidence with respect thereto.

[9] Order 14 Rule 5 CPC reads as under:-

“5. Power to amend and strike out issues. – (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

Order 14 Rule 5 CPC, gives powers to the Court at any time before the passing of a decree to amend the issues on such terms as it thinks fit and all such amendments or additional issues may be framed as may be necessary for determining the matter in controversy between the parties.

[10] Additional issue No.2 (a) which has been framed is whether the respondent had closed down its unit w.e.f. 23.11.2016 as per the provisions of the Act with the onus having been placed on the respondent-

Employer/Management. Likewise, onus of whether the respondent had paid full and final closure benefits to the workman which was framed as additional issue No.2 (b) is also on the respondent-Employer/Management. A Co-ordinate Bench of this Court in **Rajinder Tandon v. Thomas Nasir Masih in CR No.1342 of 1998** was pleased to observe that it is the duty of the Court to frame proper issues on all the points made out from the pleadings and even if a party could not press for an issue at the initial stage of framing issues made out from the pleadings, the party was not debarred from claiming an additional issue at any later stage. Relevant extract of the same is reproduced as under:-

“3. It goes without saying that it is the duty of the Court to frame issues. The same should be framed correctly taking note of the controversy that arises from the pleadings of the parties for the disposal of the suit. From the pleadings of the parties, it is abundantly clear that it is in controversy whether the property was purchased by the said defendant vide sale deed dated 22.12.93 and Sardar Masih had executed a Will dated 13.1.87. One it is so, merely because the petitioner had on earlier occasions not claimed the additional issue will not debar them from approaching the Court for framing the additional issue. It is for the added reason that the evidence had not yet started in the trial Court.”

[11] No doubt in the said case, one of the reasons for framing of additional issues was that the evidence had not yet started in the trial Court whereas in the instant case the petitioner had examined himself as WW1. However, a co-ordinate Bench in **Om Lata Kalyan v. Renuka and others,**

2018 (2) Law Herald (P&H) 1020 was pleased to hold that even if the suit

was at the stage of trial, the provision of Order 14 Rule 5 CPC would not debar the trial Court for framing issues. Relevant extract of the same is reproduced as under:-

“24. From perusal of the issues already framed and the issue sought to be incorporated qua Will, it is evident that though the issue with regard to validity of the Will executed by Nabheet Kalyan had been framed as issue No.5 and its effect by virtue of judgment, as issue No.6, but issue with regard to affidavits dated 27.05.2008 and statement dated 19.09.2008 has not been framed. It is also not apprised to this Court whether the parties to lis had already led evidence in this regard or not. Even if the suit is at the stage of trial, the provisions of Order 14 Rule 5 CPC does not debar the trial Court from framing the issues. For the sake of brevity, provisions of Order 14 Rule 5 read thus:-

“Order 14 Rule 5. Power to amend and strike out, issues.- (1) *The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made for framed.*

(2) *The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”*

25. *In my view, it would be in the fitness of things to give an opportunity to the petitioner-defendant No.1 to lead evidence by permitting framing of additional issue, though some evidence might have already been led with regard to Will, but not, with regard to affidavits and compromise as it is also settled*

law that in case parties are alive to the situation had led evidence despite the issue has not been framed, the same can always be framed as pressed by the parties and looked into by trial Court at appropriate stage. The trial Court shall frame an additional issue with regard to affidavits dated 27.05.2008 and statement dated 19.09.2008 and adjudicate upon the same after giving one effective opportunity to both the parties.”

[12] In the light of the position as noted above, I do not find any infirmity with the order dated 01.06.2018 (Annexure P-7) passed by the learned Labour Court-II, Faridabad framing additional issues No.2 (a) and 2 (b).

[13] Accordingly, the revision petition is dismissed in limine.

(B.S. Walia)
Judge

21.12.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No