

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 07.09.2018****CWP No.10389 of 2011 (O&M)**

Abhimanyu

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal -cum- Labour Court, Gurgaon &
another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashok Tyagi, Advocate, for the petitioner.

Mr. D.S.Patwalia, Senior Advocate, with
Mr. Harsh Aggarwal & Mr. Gaurav Rana, Advocates,
for respondent No.2.**RAJIV NARAIN RAINA, J. (ORAL)**

1. The question; whether the Industrial Tribunal/Labour Court becomes *functus officio* after 30 days of the pronouncement/publication of the award and loses all powers to recall an order proceeding ex parte workman and ex parte award to entertain an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award for setting aside the ex parte award, has been recently answered by the Supreme Court in M/s Haryana Suraj Malting Ltd. Vs. Phool

Chand [Civil Appeal No.5650 of 2018 decided on 18.05.2018], observing in the judgment as follows:

“33. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in **Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others, 1980 (Supp.) SCC 420**, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

34. In this context, it is also necessary to refer to Section 29, the penal sanction which includes imprisonment for breach of award.

“29. Penalty for breach of settlement or award.-

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.”

35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of

it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.”

2. The conflict between M/s Sangham Tape Company Vs. Hans Raj, (2005) 9 SCC 331 and Radhakrishna Mani Tripathi Vs. L.H.Patel & another, (2009) 2 SCC 81 has accordingly been resolved. It follows that in cases where applications are made for setting aside ex parte awards beyond the period of 30 days from the date of pronouncement/publication of the awards are not to be dismissed outright, but the cause for delay in approaching the Court would have to be gone into by the Industrial Tribunal/Labour Court. If sufficient cause for delay is explained, then the ex parte proceedings can be set aside and case decided on merits.

3. In the present case, the Industrial Tribunal -cum- Labour Court-I, Gurgaon had dismissed the application on the ground that it had no jurisdiction for setting aside an ex parte award after the expiry of 30 days from the date of its publication while relying on *M/s Sangham Tape*

Company case, which is no longer good law as declared in *M/s Haryana Suraj Malting Ltd.* case.

4. As a result, while setting aside the award dated 22.09.2010, the application for setting aside the award dated 05.11.2009 is ordered to be restored to its original number to be decided by the Industrial Tribunal -cum- Labour Court-I, Gurgaon afresh without being influenced by anything said in the award dated 22.09.2010. If sufficient cause for the delay is shown to the satisfaction of the learned Tribunal at Gurgaon and having regard to the parameters laid down in *M/s Haryana Suraj Malting Ltd.*, it will proceed to pass appropriate orders on the application after hearing the parties. In short, the Tribunal at Gurgaon will examine only the reasons which led to the workman approaching the Court beyond 30 days.

5. The petition is disposed of accordingly.

07.09.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>