

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

**CWP No. 12704 of 2013 & other connected case
Date of Decision: 11.12.2018**

M/s Jamna Auto Industries Limited

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala & Anr

...Respondent

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Avi Dhankhar, Advocate for
Mr. Hemant Bassi, Advocate for the petitioner.

Mr. Ravi K. Matoo, Advocate for respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of the above mentioned writ petition as well as other connected writ petitions* tabulated at the foot of the order as they involve common ground.

2. The challenge in this petition is to the impugned order dated 04.03.2013 passed by the Industrial Tribunal, Patiala setting aside the order proceeding ex-parte against the workman. The workman was proceeded against ex-parte in his Labour Court reference on 13.06.2005 resulting in an ex-parte award decided against him. The award was published in the official gazette on 23.09.2005. The workman moved an application for setting aside the impugned order of the award on 25.02.2008 after about 2 ½ years. The learned Labour Court has accepted the application of the workman on the grounds put forth by the workman explaining by showing sufficient cause of absence on the day

when he was wrongly proceeded against ex-parte as constituting fair and proper reasons to undo the ex parte award, making way to decide the case on merits. It goes without saying that there has not been an adjudication of the industrial dispute and consequently with the setting aside of the impugned order and the award by the Labour Court itself, space is made for the trial to begin for the decision on the merits where the parties relegated can contest their respective cases by production of evidence in support of their claims against each other.

3. The question which falls for consideration is whether the application was maintainable after the expiry of 30 days of pronouncement/publication of the award and the labour court had lost jurisdiction to entertain and decide the application for setting aside the award as by then it had become *functus officio* and had no power of recall.

4. The theory of *functus officio* has undergone a sea change recently in May 2018 with pronouncement of the judgment of the Supreme Court in M/s Haryana Suraj Malting Limited Vs. Phool Chand, AIR 2018 SC 2670 = 2018 (3) S.C.T. 97 resolving the conflict between two of the earlier decisions of the Court in Sangham Tape Co. Vs. Hans Raj, (2005) 9 SCC 331 and Radhakrishna Mani Tripathi Vs. L.H. Patel and another, (2009) 2 SCC 81, in answer to the reference order made in earlier Haryana Suraj Malting case, [(2012) 8 SCC 579] to constitute a larger bench to resolve the following terms of reference:

1. *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 ex parte award on an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award is the question that once again arises for consideration in these cases.*

2. *It may be noted that on this question two Division Bench decisions have taken apparently conflicting views. In Sangham Tape Co. Vs. Hans Raj a two-Judge Bench held and observed that an application for recall of an ex-parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/publication of the award. A contrary view was taken in Radhakrishna Mani Tripathi Vs. L.H. Patel to which one of us (Aftab Alam.J) was a party*

3. *In both cases, that is to say Sangham Tape Co. and Radhakrishna Mani Tripathi, the court referred to and relied upon the earlier decisions in Grindlays Bank Limited Vs. Central Govt. Industrial Tribunal and Anil Sood Vs. Labour Court but read and interpreted those two decisions completely differently.*

4. *The conflict which has arisen as a result of the two decisions can only be resolved by a*

larger Bench. Let these case, therefore, listed before a three-Judge Bench.

5. In paragraph Nos. 32 to 35 of the report, the Supreme Court has settled the issue observing as follows:

“32. In case a party is in a position to show sufficient cause for its absence before the Labour Court/ Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

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, 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.”

6. If the reason for absence has been properly explained to its satisfaction, then the Labour Court has committed no error in setting aside the ex-parte order and the award that followed by breaking ground for a decision of the real dispute referred to it for determination on merits to serve the ends of justice.

7. In view of the authoritative pronouncement in Haryana Suraj Malting case (supra), the petitions fail and are dismissed on finding no legal or factual infirmity in the order of recall made after a full-fledged mini trial after recording evidence, while a summary procedure, if followed, would have been the better option. That would have saved much precious time, energy and expense the parties must

have spent to settle a short point whether the order proceeding against the workman ex parte was justified.

8. As a result of the above, trial is directed to continue from the stage the respondent No 2 was proceeded ex parte. Needless to say, the merits of the case are not commented upon as there is no occasion for it. The Tribunal is advised not to read the impugned order to keep its mind fresh for the trial.

9. Parties are directed to appear before the learned Tribunal/Labour Court, Patiala on 14.01.2019 for taking further proceedings. The matter being old, the Tribunal is requested to expedite the case and make a fresh award as soon as practicable and avoiding uncalled for adjournments at the behest of the parties and their authorised representatives. The Tribunal may consider making a calendar of milestones to be achieved and calling upon parties to stick to the schedule, failing which, costs in the range of Rs 2000/- to Rs 7,000/- may be imposed on the defaulting party at the discretion of the Court, if the request for an adjournment is found not to be bona fide and genuine and made only to gain time and delay the trial.

(RAJIV NARAIN RAINA)
JUDGE

11.12.2018

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes*

Sr. No.	Case No.	Parties Name
1	CWP No. 26663 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala
2.	CWP No. 26654 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another
3.	CWP No. 26653 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another
4.	CWP No. 13884 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another
5.	CWP No. 13999 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another
6.	CWP No. 14033 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another
7.	CWP No. 26665 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another
8.	CWP No. 12851 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another
9.	CWP No. 26648 of 2013	M/s Jamna Auto Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and another

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(RAJIV NARAIN RAINA)
JUDGE