

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3938-2012 (O&M)

Date of Decision : Sept.19, 2018

Basti Wakilanwali Cooperative House Building Society Ltd.

.... Petitioner.

Versus

Balwant Singh and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Padam Kant Dwivedi, Advocate
and Mr. Vikas Singh, Advocate,
for the petitioner.

Mr. Puneet Kumar Bansal, Advocate,
for respondent No.1.

Ms. Bhavna Gupta, DAG, Punjab.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is challenge to the impugned order dated 23.09.2011 (Annexure P/6) whereby application for setting-aside ex-parte award dated 11.03.2005 was dismissed by learned Industrial Tribunal, Bathinda (for short, “**learned Tribunal**”).

2. Learned counsel for the petitioner-Society contended that the application for setting aside the *ex-parte* award remained pending with learned Tribunal for pretty long period and the delay could not have been

...

attributed to the present petitioner, but learned Tribunal while passing the impugned order attributed the delay of five years for not leading the evidence on the present petitioner, who was applicant before learned Tribunal.

3. With the assistance of learned counsel for the petitioner, this Court has gone through the interim orders passed by learned Tribunal on different dates right from framing of issues on 25.11.2005 and is of the considered view that on most of the dates, the evidence could not be led because of non-availability of the Presiding Officer or non-receipt of notification regarding appointment of learned Industrial Tribunal. In this process, the applicant-petitioner had also sought adjournments on certain dates but the delay of five years in not leading the evidence was not attributable to the present petitioner. Learned Tribunal has passed the order on the basis of incorrect facts.

4. As per the learned counsel for the petitioner-Society, otherwise, the petitioner has a very good case on merits and the matter requires adjudication on merits and for that purpose, opportunity be given to the petitioner.

5. In the written statement, respondents had taken the objection that the award was published on 13.04.2005 and the application for setting-aside the *ex-parte* award dated 11.03.2005 filed on 17.6.2005 was not maintainable. Moreso, due opportunity was given to the petitioners to lead their evidence, but they had chosen not to lead any evidence for about 4 years and there is no ground to set-aside the impugned order.

...

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that as the application for setting-aside *ex-parte* award was filed before learned Tribunal and issues have already been framed, due opportunity should have been given by learned Tribunal. However, while passing the impugned order, whereby evidence of the applicant/petitioner herein was closed learned Tribunal attributing the entire delay of 5 years on the present petitioner, though mainly the delay was on account of the fact that the Court was not working. No doubt, the applicant also availed some adjournments, but the order dated 23.09.2011 (Annexure P/6) is factually incorrect that during last five years, the applicant-petitioner herein failed to lead any evidence. Otherwise, the application for setting aside *ex-parte* award is maintainable before learned Tribunal if the Court finds that there are sufficient and justified grounds for the same.

7. Identical matter was before Hon`ble Apex Court in **M/s Haryana Suraj Malting Ltd. Vs. Phool Chand, AIR 2018 SC 2670**, wherein Hon`ble Apex Court observed as under:-

“ 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.”

8. In view of the above discussed facts and as per view taken by Hon`ble Apex Court in **M/s Haryana Suraj Malting Ltd.'s case (supra)**, the impugned order dated 23.09.2011 (Annexure P/6) is set-aside subject to payment of costs of Rs.20,000/- to be paid to respondent No.1/workman. The petitioner-Society shall conclude its entire evidence before learned Tribunal expeditiously and within a period of two months and thereafter, the respondent shall also be given reasonable opportunity to lead the evidence, if so desired within a period of two months only. Learned Tribunal shall decide the application for setting-aside the award dated 11.3.2005 on merits.

9. Resultantly, the present writ petition is allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

September 19, 2018.
som

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes