

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 29.11.2018****CWP No.3453 of 2013 (O&M)**

Uttar Haryana Bijli Vitran Nigam Limited through Executive Engineer
(XEN) Construction Division & others

...Petitioners

Vs.

The Presiding Officer, Labour Court, Ambala & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Vermani and Mr. S.K.Nehra, Advocates,
for the petitioners.

Mr. Amit Dutt, Advocate, for
Mr. Ravinder Malik (Ravi), Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

1. The Management has filed this petition for setting aside the ex parte award dated 30.08.2012 and for quashing the order dated 25.07.2013 by which the application for setting aside the ex parte award has been dismissed on the ground that the Labour Court has become *functus officio* and has lost jurisdiction over the matter.

2. It is the case of the management that it was not served with summons to appear in the reference and was proceeded against ex parte behind its back and without knowledge of the proceedings. It is averred that they came to know of the order/award only after receiving notice from the Labour Inspector, Circle I, Ambala in execution. Thereafter, they approached the Labour Court by filing an application for recall of the award

and for a decision on merits. It was during the pendency of this petition, the Labour Court dismissed the application for recall of the ex parte award. The petition was accordingly amended to challenge the fresh order.

3. Heard learned counsel for the parties.

4. The question which falls for consideration is 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 management and as a consequence the ex parte award. The issue is no longer res integra and has been recently answered by the Supreme Court in **M/s Haryana Suraj Malting Ltd. Vs. Phool Chand**, AIR 2018 SC 2670, 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.”

5. 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.

6. In the present case, the Presiding Officer, Labour Court, Ambala 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.

7. As a result, while setting aside the order dated 25.07.2013, the application for setting aside the ex parte award dated 30.08.2012 is ordered to be restored to its original number to be decided by the Labour Court, Ambala afresh. If sufficient cause for the delay is shown to the satisfaction of the learned Labour Court 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 Labour Court will examine only the reasons which led to the Management approaching the Court beyond 30 days.

8. The petition is disposed of accordingly.

9. Parties to appear before the Labour Court, Ambala on 28.01.2019.

29.11.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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