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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 11th October, 2018

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W.P.(C) 570/2018 & CM No. 2514/2018

STATE BANK OF INDIA

..... Petitioner

Through:

Ms. Savita Singh, Adv.

versus

SANJAY KUMAR

..... Respondent

Through:

Mr. Ankit Khera, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

1. This writ petition, at the instance of the State Bank of India, assails Award dated 14th June, 2017, passed by Sh. Harbansh Kumar Saxena, the Presiding Officer, CGIT-II, Karkardooma.

2. In view of the order that I propose to pass, it is not necessary to make any reference to the contents of the said Award, or the ultimate decision therein.

3. Annexure P-3 and P-2, to the writ petition, are the orders passed by the said Presiding Officer on 2nd May, 2017 and 9th May, 2017. They read thus :

Order dated 2nd May, 2017 :

“Present: B.S. Rawat, Ld. A/R for the workman.

Ms. Savita, Ld. A/R for the management.

Ld. A/R for the management filed an application informing me that she cannot wait up-to 2 P.M. I afforded her option to further cross-examine the witness. It is 12:20, I gave her option she is not ready to cross-examine. If she is not ready to cross-examine within 5 minutes her right of cross-examination shall be closed and management shall be treated defaulter as per provision of Rule 10-B Industrial Dispute (Central) Rules, 1957 and case will proceed accordingly.

Sd/-
P.O.

Subsequently right of further cross examination closed.

Thereafter Ld. A/R for the W/m closed remaining evidence of the W/m.

Fixed 9/5/17 for M/E if any.

Sd/-
P.O.”

Order dated 9th May, 2017 :

“9/5/17

Present- Sh. B.S. Rawat Ld A/R for the workman

It is relevant to mention here that on the last date Ld A/R for management has not availed her right of cross examination with WW1. Hence her right of cross examination was closed. Thereafter A/R for workman closed remaining evidence of workman.

Procedure provided in Rule 10-B of Industrial Disputes (Central) Rules 1957 is adopted in I.D. Cases.

According to Sub-Rule (8) of Rule-10-B of Industrial Disputes (Central) Rules 1957 I fixed 9/5/2017 for Management evidence.

*It is further relevant to mention here that Ms. Savita Ld. A/R for the Management **behave like a mischief monger** however I ignored as none on behalf of the management was present.*

Instead of filing affidavit an application has been moved on behalf of management. Copy of which supplied to the Ld. A/R for management. Who made an endorsement on application opposing it.

Heard.

Put up for order after lunch.

Sd/-
P.O.

Aft. Lunch

Case is fixed for order relating to disposal of application moved for setting aside order dated 2.5.2017 through which right of cross examination which WW1 has been closed.

I have heard the Ld. A/Rs for the parties at length and perused the contents of application including provisions of sub-rule (8) and (9) of Rule 10-B, Industrial Disputes (Central) Rules, 1957 as well as conduct of Ld. A/R of management in this Tribunal on last date. Which **cast heavy impression on me through her threatening gestures**. She tried to dictate terms to this Tribunal in getting the case adjourned to any other date for cross examination of WW1.

*It is relevant to mention here that conduct of Ld. A/R for the management. Through her conduct **she appeared as mischief monger**.*

*I treat her frustrated lady and ignored her threatening gestures but **she crossed limit**.*

In this background management application for setting aside order dated 2.5.2017 is not liable to be allowed.

Otherwise it will go message to such lawyers that this court can be easily overpowered by such activities.

Which is accordingly rejected.

Today management has not filed affidavit of management witness nor moved adjournment application. Hence this Tribunal has no option except to close the right of management application as per provision of sub rule (9) Rules 10-B Industrial Disputes (Central) Rules, 1957 which is accordingly closed.

Case will proceed ex-parte against management.

Fixed 30.05.2017 for ex-parte arguments of Ld. A/R for the workman.

*If any such candidate is repeated by Ld. A/R for the management in this Tribunal in future then **I shall report the matter for cancellation of her enrollment number as an advocate to the concerned bar council.***

Sd/-
P.O.”

(Emphasis supplied)

4. Sobriety and temperance are the *de minimis* that are expected of an officer exercising judicial functions. Often does the judge encounter litigants, and lawyers, who are irascible and may sorely test his fortitude; the judge, needless to say, is required to rise above such sentiments and apply himself, dispassionately, to the issue at hand. The italicised words, contained in the orders passed by the court below, do not, I am constrained to observe, conform to the standard required of an officer exercising judicial functions. Apart from the other comments entered by the Presiding Officer, his condemnation, of the learned counsel, who appeared before him, as a “frustrated lady” was *ex facie* objectionable, and amounts to dishonour to the

counsel herself. Besides, the acknowledgement, by the Presiding Officer that the said learned counsel had “cast heavy impression” on him “through her threatening gestures” has, in my view, disintitled the Presiding Officer to continue to deal with this case, as the “heavy impression” cast on him by the behavior of the counsel clearly has the propensity of clouding his judgment.

5. Without making any further comments on the remarks entered by the learned Presiding Officer of the Industrial Tribunal, and in view of the fact that the learned counsel for the respondent agrees to the matter being remanded for reconsideration by another officer, this writ petition is allowed.

6. The orders dated 2nd May, 2017 and 9th May, 2017, as well as the impugned Award dated 14th June, 2017 are, therefore, quashed and set aside. The matter is remanded for being considered afresh and *ab initio*, from the stage at which the reference had been received, by the Industrial Tribunal, from the Government.

7. Learned counsel for the petitioner submits that, after passing of the impugned Award, there has probably been a transfer of the competent Industrial Tribunal from Karkardooma to Dwarka. This is a matter which would be within the province of the learned District Judge, who, no doubt would take a view thereon.

8. Needless to say, the *de novo* proceedings would remain completely uninfluenced by any order passed in the dispute prior hereto.

9. A copy of this order is directed to be communicated to the learned District Judge having jurisdiction over the dispute, who is requested to assign the matter, for *de novo* consideration, to a judicial officer other than Sh. Harbansh Kumar Saxena. Needless to say, the parties would be put on appropriate notice of the listing of the proceedings, by such officer.

10. The learned District Judge is also requested to advise Mr. Harbansh Kumar Saxena to exercise greater circumspection and restraint in the discharge of his judicial functions, especially in the orders passed by him.

11. The writ petition stands allowed in the above terms.

12. There shall be no order as to costs.

C.HARI SHANKAR, J

OCTOBER 11, 2018/kr