

\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 29/2018 & CM Nos. 2512/2018 (stay) & 2513/2018
(Exemption)

KANGARO (INDIA) PVT LTD Appellant
Through Mr. Mohak Bhadana and Mr. Ankush
Diwan, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents
Through None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **23.01.2018**

The present Letters Patent Appeal assails an order dated 2nd January, 2018, passed by a learned Single Judge of this Court in W.P. (C) No. 9580/2018, titled as “*M/s Kangaro India Pvt. Ltd. vs. Govt. of NCT of Delhi & Anr.*”, whereby the said writ petition instituted on behalf of the appellant was found to be not maintainable and accordingly dismissed.

The facts as are relevant for the adjudication of the present appeal are adumbrated as follows:-

(i) The respondent No. 2/workman asserts that the appellant had terminated his services illegally and, in consequence thereof, an industrial dispute with the following terms of reference is pending adjudication before the Industrial Adjudicator:-

“Whether the services of Sh. Sudhir Kumar Rai S/o Sh. Surender Nath Rai age-37 years, (Mobile No.-9910258675), have been terminated illegally and/or unjustifiable by the management; and if so, to what relief is he entitled and what directions are necessary in this respect?”

(ii) The solitary ground on which the said writ petition as well as the present appeal are predicated is the appellant's/management's stand that the reference itself was without jurisdiction; in view of the circumstance that the services of the respondent No. 2/workman have not been terminated and the latter has in fact voluntarily absented himself from duty.

In our view, the impugned order dated 2nd January, 2018, correctly propounds the issue and returns a finding that this court is not to make a fact finding enquiry, which is within the exclusive domain of the Industrial Adjudicator. We, therefore, see no error in the finding arrived at in the impugned order and we are of the considered view that the present proceeding is an attempt to invoke the extraordinary jurisdiction of this Court to pre-empt the determination of the reference pending adjudication before the Industrial Adjudicator.

It is trite to state that that the issue agitated by the appellant before us lies within the exclusive subject jurisdiction of the Industrial Adjudicator, who is invested with powers to determine the same after conducting an enquiry in accordance with law.

At this stage, learned counsel appearing on behalf of the appellant submits that the respondent No. 2/workman did not respond to the notice issued by the learned Single Judge prior to the dismissal of the said writ petition. In our view, this submission is neither here nor there in view of the circumstance that the respondent No. 2/workman cannot be imposed upon to appear before the Court, in a proceeding which is not maintainable in law and, particularly, when the appellant has not been willing to reimburse any litigation expenses in this behalf.

Consequently, the present appeal being devoid of merit is dismissed. Pending applications also stand disposed of. The appellant is also directed to deposit a sum of Rs.50,000/- with the Industrial Adjudicator before whom the aforementioned reference is pending, to be disbursed to the respondent No. 2/workman towards litigation expenses, within a period of two weeks from today.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

JANUARY 23, 2018

rs