

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: December 03, 2018

+ **W.P.(C) 1730/2015 & CM 19380/2017**

M/S KAY INTERNATIONALPetitioner

Through: Ms. Amita Gupta and Ms. Neha
Tyagi, Advocates

versus

RAGHUBIR SINGHRespondent

Through: Mr. S.D.Wadhwa, Advocate

+ **W.P.(C) 8680/2015 & C.M. 7784/2016**

RAGHUBIR SINGHPetitioner

Through: Mr. S.D.Wadhwa, Advocate

versus

M/S KAY INTERNATIONALRespondent

Through: Ms. Amita Gupta and Ms. Neha
Tyagi, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. The above captioned two petitions are directed against Award of 13th November, 2014 which directs the Employer-M/s *Kay International* (*hereinafter referred to as Employer*) to pay the balance amount of ₹1,44,677/- with interest @ 7% per annum to the Workman- *Raghubir*

Singh (hereinafter referred to as “workman”). The finding returned in the impugned award is that the Workman had not voluntarily resigned and so, he is entitled to reinstatement.

2. In the above captioned first petition, the Employer challenges the impugned Award on the ground that the settled amount of ₹1,54,677/- stands paid to the Workman and so, the Employer is not liable to pay any amount to the Workman. In the above captioned second petition, the challenge to the impugned Award is to the extent that the finding returned in the impugned Award regarding Workman having resigned is erroneous. It is the case of Workman that he was compelled to resign and in the first round of litigation, the trial court had directed his reinstatement and so, he ought to be reinstated with the full back wages.

3. Since the above captioned two petitions arise out of common impugned Award, with the consent of learned counsel for the parties, both the petitions have been heard together and are being decided by this common order.

4. Learned counsel for the Employer has drawn attention of this Court to Receipt Ex. (WW1/M1) and the evidence of the Workman to show that he has admitted his signature on the Receipt. It is pointed out that the Workman in his evidence has categorically stated that his witness Om Prakash (WW-2) had also signed the Receipt Ex. (WW1/M1) and so, it is submitted that the Employer has no liability to pay the awarded amount.

5. On the contrary, learned counsel for respondent-Workman submits that the Receipt regarding token of receiving the settled amount, was

filled in by one Tiwari, as the Workman does not know how to read and write and the alleged settlement was arrived at in the factory of Om Prakash (WW-2) in Pitampura. It is submitted that Om Prakash (WW-2) is friend of the Employer and it was assured that the cash amount of ₹1,44,677 would be paid on the next date but the said cash was not brought on the day of the settlement. It is further submitted that the resignation by the Workman was under coercion and so, the Workman deserves to be reinstated with full back wages.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the resignation letter and the Receipt in lieu of the settlement between the parties was executed at the factory premises of Om Prakash (WW-2). On perusal of evidence of Om Prakash (WW-2) and the other evidence on record, I find that the plea of Workman obtaining resignation letter under coercion cannot be accepted. It cannot be said that Om Prakash (WW-2) is under the influence of the Employer and his witness got examined by the Workman. Otherwise also, there is no basis to reach such a conclusion. The Workman in his evidence has admitted that he had received amount of ₹10,000/- by way of a cheque as part settlement and regarding remaining settlement amount of ₹1,54,677/-, he is unable to recollect as to when it was given. But the Workman has not denied his signatures on the Receipt executed in token of receiving the said amount of ₹1,54,677/- odd. Not only this, the Workman in his evidence has deposed that may be Om Prakash (WW-2) has signed the Receipt executed in token of the settlement arrived at between the parties. It is a matter of record that the Receipt Ex. (WW1/M1) bears the

signatures of the Workman as well as of the witness- Om Prakash (WW-2).

7. In the considered opinion of this Court, the trial court has rightly concluded in the impugned Award that the Workman had resigned in view of the settlement arrived at between the parties. However, there is no basis for the trial court to conclude that the entire settled amount of ₹1,54,677/- was not received by the Workman. In the face of the evidence of Workman and Om Prakash (WW-2), the impugned Award, so far it directs payment of ₹1,44,677/- with interest cannot be sustained and is accordingly set aside. The impugned Award stands accordingly modified in the aforesaid terms.

8. Consequentially, the writ petition filed by the Workman is dismissed and the writ petition filed by the Employer is allowed to the extent indicated above.

9. These petitions and applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

DECEMBER 03, 2018

v