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

Date of decision: 29th October, 2018

+ W.P.(C) 3519/2014 & CM APPL.7197/2014 (*stay*)
M/S VARDHMAN CREATION Petitioner
Through: Mr.Mahesh Srivastava, Adv.

versus

YOGENDER PRASAD Respondent
Through: Mr.Rama ShankarYadav, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **JUDGMENT (ORAL)**

1. The petitioner Vardhman Creation is the proprietorship of Ms. Amita Jain, who is the wife of Mr. Rakesh Jain.
2. This writ petition, at the instance of M/s Vardhman Creations, assails the Award, dated 8th August, 2011, passed by the Labour Court in ID No.755/08 (Unique Case ID no 02402C0348102008).
3. The Award was passed, consequent to reference, by the Secretary (Labour), Govt. of NCT of Delhi, to the Labour Court, on 24th April, 2008. The term of reference reads thus:
“Whether services of Sh. Yogender Prasad S/o Sh. Khedaru Prasad have been illegally and/or unjustifiably terminated by the management; and if yes, to what relief is he entitled?”

4. The Statement of Claim, filed by the respondent-workman, stated that he had been working as a Quality Controller with the petitioner since 1st October, 2005 and that his last drawn salary was Rs. 8,000/- per month. The petitioner did not provide any appointment letter, identity card, leave book etc., to the respondent, and that on the respondent pressing for his demands, the petitioner, in annoyance, terminated his services on 15th November, 2006, without notice, charge-sheet and without compliance with the provisions of Section 25(f) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”).

5. The Statement of Claim further recited that the respondent had sent a demand notice, to the petitioner, on 22nd December, 2006, and, on finding no response thereto, followed it up with an attempted conciliation which, too, failed. It was in these circumstances, that the respondent initiated industrial disputes, which has led to these proceedings.

6. The impugned Award notes that notice of the Statement of Claim was sent to the petitioner, for appearance and filing written statement, but that the petitioner did not appear, “despite service”, as a result whereof the petitioner was proceeded *ex parte*, on 24th September, 2008.

7. It is also not in dispute that the said order dated 24th September, 2008, whereby the petitioner was proceeded *ex parte*, has not been challenged till date.

8. As a result, the petitioner led no evidence. The respondent, on the other hand, examined himself as WW-1 and filed his affidavit in evidence, which was exhibited as WW-1/A. He also filed documents, exhibited as WW-1/1 to WW-1/12, on which he placed reliance.

9. Mr. R. B. Singh, Labour Inspector, was cited by the respondent as his second witness, i.e. WW-2. He proved his letter (Ex. WW-1/6), in which it was mentioned that the stand of the petitioner-management was that no wages were due to the respondent, and that they were not ready to reinstate him in service. As no evidence had been led by the petitioner, the Labour Court, observing that the petitioner had filed his affidavit in evidence and that the letter Ex.WW-1/6 had been admitted by the WW-2 R. B. Singh, opined that the respondent had proven his employment with the petitioner and the fact that the petitioner having terminated his service in violation of the law. As such, the Labour Court declared the termination of the respondent's services to be illegal. Given the lapse of time, since the said termination, however, the Labour Court deemed it appropriate not to direct reinstatement of the respondent but, instead, awarded him lumpsum compensation of Rs. 2.5 lakhs.

10. The management has moved this Court, by means of present proceedings, assailing the above Award.

11. Given the fact that the petitioner had not represented itself before the Labour Court and led no evidence in support of its stand, it is obvious that it would not be permissible for the petitioner to lead any evidence, in the first instance, before this Court, unless the

petitioner could convince the court that the Labour Court had erred, in fact or in law, in proceeding *ex parte* against the petitioner.

12. Mr. Mahesh Srivastava, learned counsel for the petitioner, emphatically contends that the impugned Award is vitiated on account of violation of the principles of natural justice, inasmuch as no proper service of the proceedings before the Labour Court was ever effected on his client.

13. In order to ascertain the correctness of the stand, the record of the Labour Court was requisitioned.

14. On perusal of the record, it is observed that on 29th July, 2008, notice was directed, by the Labour Court, to be issued to the petitioner through Process Server and Registered AD post, for the next date i.e. 24th September, 2008.

15. On 24th September, 2008, there was no appearance on behalf of the petitioner in the forenoon, though there is a specific observation by the Labour Court, in the order passed on the said date, that the petitioner stood served. The matter was passed over to 12:30 p.m. and, thereafter, to 2:25 p.m. There was no appearance on behalf of the petitioner even at that stage. At 2:25 p.m., the following order was recorded by the Labour Court:

“Present: workman with AR

None has appeared from management since morning.

Management has been duly served. Summons have been duly received by one Sh. Rakesh Jain whose signatures are

appearing on the report of process server. Now management are proceeded against exparte. Put up for exparte evidence of workman by affidavit on 12.12.08.

Sd./-
POLC-II/24.09.08”

16. Clearly, the above order notes the fact that the summons issued by the Labour Court had been received, by Rakesh Jain, who had signed on the report of the Process Server.

17. The submission, regarding the said service, as contained in the immediately succeeding para of the writ petition, are interesting and read thus:

“ix. It is stated that Rule 18 of the Industrial Dispute (Central) Rules, 1957 requires that notice, summons, process or orders is required to be served either Personally or by Registered Post. It is stated that in the present case notice has not been served either personally or through registered post. It is stated that the petitioner is a proprietary establishment and Sh. Amita Jain is a proprietor of the establishment. It is stated this fact was known to the respondent he has deliberately concealed the correct name of the establishment and also concealed the proper address of the petitioner. It is stated that by concealing the vital facts the respondent has procured the service report from the process server. It is stated that on the basis of manipulated report of the process server Ld. Labour Court has proceeded exparte against Vardhman Creation Exports on 24.09.2008.”

18. It is significant that the petitioner has remained diplomatically silent, in his writ petition, regarding the receipt of service of the summons issued by the Labour Court, by Rakesh Jain, probably because the petitioner was conscious enough to stop short of perjury.

19. The fact of receipt of the summons by Rakesh Jain is, significantly, not denied. While launching a barrage of allegations – needless to say, without a whit of evidence to support them – that the respondent had manipulated the Process Server, manipulated the process of the court, etc., the petitioner has studiously omitted to mention the fact that Rakesh Jain, who received the summons from the court was, in fact, her husband.

20. The *sine qua non* for invoking the extraordinary jurisdiction, conferred on this Court – or, for that matter, on any Court – by Article 226 of the Constitution of India, is that the party approaching the court, must, to employ a time worn *cliche*, “come with clean hands”.

21. The requisite degree of cleanliness is, however, I am constrained to observe, not forthcoming, on the hands of the petitioner.

22. The petitioner has not denied the fact that summons issued by the Labour Court were, indeed, received by Rakesh Jain. She, has, however, concealed the fact that Rakesh Jain was her husband.

23. In that view of the matter, I am unable to accept the submission, of Mr. Mahesh Srivastava, that no proper service, of the summons issued by the Labour Court, was effected on his client.

24. Given the fact that the petitioner’s husband had received the summons, it cannot be even believed that the petitioner remained

totally oblivious about the proceedings in the Labour Court and of her having been proceeded *ex parte* on 24th September, 2008.

25. Much was sought to be made, by Mr. Srivastava, of Rule 18 of the Industrial Disputes (Central) Rules, 1957, which reads thus:

“Service of summons or notice.

Subject to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, National Tribunal or an Arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall be sent again under certificate of posting.”

26. Mr. Srivastava’s submission is that the service, on the husband of a proprietor, is not a proper service, as contemplated by Rule 18.

27. I am not prepared to enter into the niceties of this argument. The fact of the matter is that the petitioner’s husband did receive a notice issued by the Labour Court. While reproducing the order of the Labour Court passed on 24th September, 2008, the petitioner remained non-committal regarding the receipt of the notice by Rakesh Jain. She concealed the fact that Rakesh Jain was her husband.

28. In view of the above, I am unprepared to accept the submission of Mr. Srivastava that there was no proper service of notice, on his client, by the Labour Court.

29. For reasons best known to his client, she chose to remain not present, in the proceedings before the Labour Court. She also chose not to challenge the order proceeding against her *ex parte*.

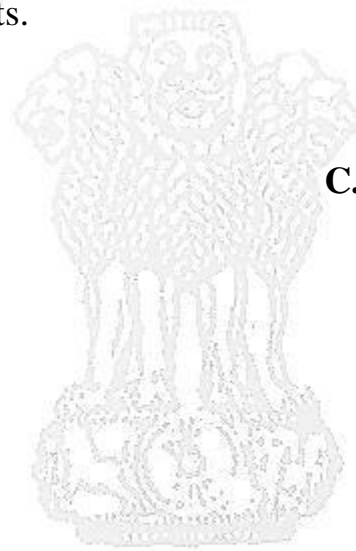
30. No infirmity, therefore, whatsoever, can be discerned, in the Labour Court proceeding on the basis of the unrebutted assertions of the respondent, and passing the impugned Award in his favour.

31. For the abovementioned reasons, the writ petition is dismissed with no orders as to costs.

C. HARI SHANKAR, J

OCTOBER 29, 2018

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