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

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Date of Judgment: 07.05.2018

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WP (C) 4844/2018

M/S. INDIA OFFSET PRINTERS (P) LTD. Petitioner
Through: Mr.Arun Kumar Verma, Advocate.

versus

DINESH PANDEY Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

CM APPL. 18645/2018 (Exemption)

Exemption allowed subject to all just exceptions.

Application is disposed of.

CM APPL. 18646/2018 (Delay)

For the reasons explained in the application, delay in re-filing the writ petition is condoned.

Application is disposed of.

WP (C) 4844/2018 & CM APPL. 18644/2018 (Stay)

1. The petitioner/Management has assailed the ex-parte award dated 03.09.2015 passed in ID No.06/15 (OLD ID No.01/13) by the learned Presiding Officer, Labour Court, Karkardooma, Delhi (in short 'Industrial Adjudicator') and the order dated 05.08.2017 dismissing its application under Order IX Rule 13 read with Section 151 CPC.

2. The brief facts of the case are that the respondent was working with the petitioner Management as a Fitter Man at a salary of Rs.5,500/- per month with effect from 04.06.2002. When the respondent demanded certain benefits, the petitioner Management terminated his services on 21.04.2012. The respondent lodged a complaint on 24.04.2012 through his Union to the Labour Department. The respondent also sent a demand notice dated 23.04.2012 to the petitioner. The respondent filed a complaint dated 11.06.2012 before the Conciliation Officer. Ultimately, the respondent raised his direct industrial dispute before the Industrial Adjudicator.

3. Notice of the petition was served upon the petitioner on 23.03.2013. One Shri Ajeet Kumar Ahuja, Advocate having Enrolment No.D/130/78, Resident of 21B, GF, Sukhdev Vihar Road, New Delhi-110025, had put in his appearance on behalf of the petitioner on 02.04.2013 by filing his memo of appearance and took a date for filing the written statement and after 2-3 dates the petitioner Management stopped appearing and was proceeded ex-parte on 10.07.2014.

4. In support of his case, the respondent examined himself as WW-1 and adduced his documentary evidence. The respondent has placed on record the copy of his complaint dated 24.04.2012, demand notice dated 23.04.2012 along with postal receipt, statement of claim filed by the Conciliation Officer, copy of his identity card, ESI card and acknowledgment receipt of the money order at the address of the petitioner. On appreciation of the ex-parte evidence, the Industrial

Adjudicator arrived at a conclusion that the respondent has been the employee of the petitioner since 04.06.2002 at a salary of Rs.5,500/- per month and his services were terminated on 21.04.2012 in violation of Section 25F of the Industrial Disputes Act, 1947. However, in view of the judgments of the Hon'ble Supreme Court in (i) **Reetu Marbles vs. Prabhakant Shukla** (2010) 2 SCC 70, and (ii) **M/s.P.V.K. Distillery Ltd. vs. Mahendra Ram** (2009) 5 SCC 705, the Industrial Adjudicator directed reinstatement of the respondent in services with benefit of continuity and 50% of the back wages.

5. Admittedly, the award was published on 18.12.2015.

6. Subsequently, the petitioner filed an application No.Misc.DJ 106/2017 under Order IX Rule 13 CPC read with Section 151 CPC for setting aside the ex-parte award dated 03.09.2015.

7. While dismissing the application under Order IX Rule 13 CPC, the Industrial Adjudicator has taken note of the fact that the petitioner Management was served with the notice of the claim on 23.03.2013 and pursuant thereto Shri Ajeet Kumar Ahuja, Advocate had appeared on behalf of the petitioner Management on 02.04.2013 and 06.08.2013, and on 06.08.2013 Shri Ahuja had withdrawn his authority to appear in the matter. After hearing the parties, the Industrial Adjudicator has dismissed the application of the petitioner after noting the fact that the award had already been published on 18.12.2015 which became enforceable on 18.01.2016 and once the award has become enforceable under Section 17 of the Industrial Disputes Act, the Labour Court becomes functus officio in view of

judgment of the **Hon'ble Supreme Court** in **M/s. Sangam Tape Company vs. Hans Raj (2005) 9 SCC 331**.

8. Learned counsel for the petitioner submits that the Industrial Adjudicator should have issued notice to the petitioner Management when an unauthorized Advocate had stopped appearing on its behalf. He submits that they have already paid the entire wages to the respondent to the tune of Rs.2,56,336/- by two demand drafts; one being dated 04.02.2017 for Rs.2,17,531/- and another dated 06.02.2017 for Rs.38,805/- in compliance of the Award dated 03.09.2015 and the respondent has not been joining the services despite the petitioner/Management asking him by its reply dated 16.03.2017 in response to another demand of the respondent/workman for a sum of Rs.1,67,021/- by letter dated 08.03.2017. He submits that now the Recovery Certificate for Rs.1,67,021/- has been issued against them.

9. A perusal of the application under Order IX Rule 13 CPC read with Section 151 CPC dated 03.12.2016 and impugned order dated 05.08.2017 passed thereon reflect that the petitioner had never taken the plea that it had not engaged Shri Ajeet Kumar Ahuja, Advocate to defend it before the Industrial Adjudicator. In his memo of appearance, the learned counsel had mentioned his enrolment number, complete address, landline telephone number and mobile number. This plea of unauthorized appearance has been taken for the first time in the writ petition which cannot be permitted. The petitioner had not issued any notice to Shri Ajeet Kumar Ahuja if it was his unauthorized

appearance on its behalf. Admittedly, the petitioner had not taken any action against him. The plea of unauthorized absence taken in the writ petition is an afterthought. Even after making the payment of the back wages of Rs.2,17,531/- vide demand draft No.086792 dated 04.02.2017 and Rs.38,805/- vide demand draft No.086795 dated 06.02.2017, and dismissal of its application under Order IX Rule 13 CPC on 05.08.2017, the petitioner had not taken immediate steps to challenge the impugned award though Recovery Certificate 02.11.2017 was issued against it for recovery of Rs.1,67,021/- as wages for subsequent period. It is not disputed that the respondent was employed with the petitioner. Learned counsel for the petitioner submits that the respondent left the job on 12.05.2012 without any intimation but strangely pleaded that he had settled his claim earlier on 09.05.2012. When the respondent had already settled his claim on 09.05.2012, it is not explained why he will leave the job on 12.05.2012. The petitioner by its act, conduct and acquiescence has already accepted the impugned award by making payment to the respondent workman.

10. In the facts and circumstances of the case, I do not find any merit in the petition. The writ petition is hereby dismissed along with the stay application.

(VINOD GOEL)
JUDGE

MAY 07, 2018
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