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

% *Date of Judgment: 27th August, 2018*

+ LPA 864/2015 & C.M.28934/2015 (stay)

ANUP KUMAR GUPTA

..... Appellant

Through: Mr.F.K.Jha, Mr.Shashank A. Singh
and Mr.Sarwesh, Advocates

versus

SURENDER SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Despite the matter having been passed over once and called a second time, none has appeared on behalf of the respondent. We may note that despite service of notice, none has appeared on behalf of the respondent on any of the dates of hearing.
2. The present appeal is directed against the order passed by the learned Single Judge dated 03.09.2015 by which the writ petition challenging the order of the Labour Court dated 21.05.2015 vide which an application under Order IX Rule 13 of the Code of Civil Procedure (CPC) by the petitioner (appellant herein) for setting aside the ex-parte award dated 14.12.2011 was dismissed.
3. Some necessary facts which are required to be noticed for disposal of the appeal are that the respondent had referred a dispute having arisen

between the parties to the labour court with the following terms of reference:

“Whether services of Sh. Surender Singh, S/o Sh. Maharaj Singh have been illegally and/or unjustifiably terminated by the management; and if yes, to what relief is he entitled; and what directions are necessary in this regard?”

4. An *ex-parte* award was rendered on 14.12.2011 and thereafter the workman filed an execution petition wherein the appellant herein filed an application under Order IX Rule 13 of CPC. In the application, it was averred that firstly, the appellant had no concern with M/s Universal Electronics (T.V. Factory) where the workman was employed and secondly, no proper service was effected. This application under Order IX Rule 13 CPC was dismissed by the Labour Court by an order dated 21.05.2015. The Labour Court dismissed the application on the ground that the appellant had refused to accept the summons. Thereafter, notice was affixed at the spot and despite proper service, the management did not appear. The concluding para of the order dated 21.05.2015 reads as under:

“Arguments heard. Record perused. On perusal of record it is revealed that one process of the process server dt. 31.05.11 has been received back with the report that “one person namely Dhruv Parsad met on the spot who told that no such firm exists in the name of M/s. Universal Electronics at the address given in summons” and another process of the process server dt. 25.08.11 was received back with the report that “one person namely Anup Gupta met him who had not received the notice”. Therefore, the present notice was affixed at the spot but since then management did not appear despite service by way of affixation and as such the management was proceeded ex-parte. Although there is no provisions in the Industrial Disputes Act for service of notice upon party concerned

through affixation but on the other hand it is also established that the present applicant has avoided the service of summons during the pendency of industrial dispute case proceedings. The conduct of the present applicant also proves that he had not received the summons intentionally, whereas there was no mistake in the address of the management given in the summons. One report of process server itself shows that Anup Gupta, who is present applicant had met him and he refused to accept the notice. It is also revealed that the present application under Order 9 Rule 13 CPC was also moved by one Sh.Anup Kumar Gupta who is the present applicant which shows that the present applicant has intentionally avoided the service of summons during the pendency of industrial dispute case proceedings. Furthermore, merely saying that applicant could not be served cannot be accepted in the light of report of process server.”

(emphasis added)

5. The learned Single Judge also dismissed the writ petition by an order of 03.09.2015 observing that while exercising powers under Articles 226 and 227 of the Constitution of India, the Court would not sit as a Court in appeal. The learned Single Judge also returned a finding that notice of appearance was sent to M/s Universal Electronics on 03.06.2011 and that the M/s Universal Electronics had been properly served.
6. Mr.F.K.Jha, counsel for the appellant, has reiterated the submissions made before the labour court and the learned Single Judge that the appellant had not employed the respondent and the appellant has no concern with M/s Universal Electronics. Mr.Jha has further submitted that even if the summons were served upon the appellant, since he has no connection and concern with the respondent, he had no liability towards the workman/respondent.
7. We have examined the orders passed by the Labour Court and the

order passed by the learned Single Judge. We have extracted the operative paragraph of the order dated 21.05.2015 passed by the Labour Court for the reason that the objection raised by the appellant that he has no concern with the workman and that he was running a rubber factory and nothing to do with M/s Universal Electronics at all was not considered. This aspect has also been escaped by the learned Single Judge as well. Since the respondent has chosen not to appear and neither any document has been placed before us to show that workman/respondent had received any salary from the appellant herein, although the appellant had submitted that he has no concern whatsoever with M/s Universal Electronics. This, in our view, was the moot issue to be decided while deciding the application filed under Order IX Rule 13 of the CPC. The Labour Court and the learned Single Judge have returned a finding that there was a proper service but the question remains to be answered is as to whether the workman was employed by the appellant, although we may add that while deciding the application filed under Order IX Rule 13 CPC, the statement of the workman was not recorded that he was being paid salary by the appellant. Both the courts have not returned any finding on this issue. We may note that although the operation of the execution of the award was stayed, the workman has chosen not to appear and contest the matter, which we find rather strange. Accordingly, we set aside the order dated 03.09.2015 passed by the learned Single Judge as also order dated 21.05.2015 passed by the labour court on the application filed under Order IX Rule 13 CPC. The labour court shall decide the question as to whether the workman

was, in fact, employed by Mr.Anup Kumar Gupta or not. It will be open for the labour court to examine such documents which may be produced by the workman and the appellant herein and consider the documents before deciding the matter.

8. With the above directions, the present appeal and C.M.28934/2015 are disposed of.
9. The appellant shall appear before the labour court on 04.10.2018.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 27, 2018

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