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

% *Date of Judgment: 21.05.2018*

+ **W.P.(C) 3596/2018 & CM APPL. 14234/2018**

MANOJ & ORS. Petitioners

Through: Mr. P.K. Maitra, Advocate.

versus

M/S. R.C. SOOD AND CO. PVT. LTD/AJAY ENTERPRISES
PVT. LTD. AND ANR. Respondents

Through: Mr. Harvinder Singh, Advocate
with Mr. Rohit Agrawal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. Sh. Harvinder Singh, learned counsel for the respondent, has put in his appearance for the Management. He has handed over synopsis with list of dates and copies of the documents, which are taken on the record.
2. In this writ petition the petitioners seek quashing of an interim order dated 04.08.2017 passed by the learned Presiding Officer, Industrial Tribunal, Karkardooma Courts, Delhi (in short 'Industrial Adjudicator') in I.D. No. 383/2016.
3. The relevant facts giving rise to file the present writ petition are that on 15.02.2011, the Government of NCT of Delhi has sent a reference of industrial dispute under Section 10 (1) (c) and 12 (5) of the Industrial Disputes Act, 1947 (in brief 'ID Act') to the

Industrial Tribunal-II, for adjudication. The terms of the reference are as under: -

“Whether demands of workmen employed by M/s. R.C. Sood & Company Pvt. Ltd./Ajay Enterprises Pvt. Ltd. for (a) Children allowances @ Rs.2500 p.m. (b) Increase in Basic pay 25% per year (c) Tow pairs of uniforms in a year. (d) Bonus along with 3 years arrear year on the basis (e) washing allowance @ Rs.250/- p.m. (f) House Rent @ Rs.2000/- p.m. are justified and if so what directions are necessary in this respect?”

4. The statement of claim was filed before the Industrial Adjudicator on behalf of workmen through its union. The respondent/management filed its written statement on 12.03.2012. After completion of the pleadings, issues were framed on 14.05.2012.
5. The petitioners preferred an application for admission and denial of certain documents on 02.09.2014. In its reply, the management/respondent, inter-alia, pleaded that the admission and denial of the documents can be conducted of the documents which are obtained from a lawful source and not of procured or fabricated documents. It also pleaded that the fabricated photocopies contained reference to Eros Garden Colony, Charmwood village, Woodbury Tower etc., which all are situated in Faridabad, Haryana, and is outside the territorial jurisdiction of the court.
6. After hearing the parties on 30.10.2014, the Industrial Adjudicator allowed the application of the petitioner for admission and denial of the documents. Pursuant to this order

the admission and denial of the documents was carried out. Later on, the petitioner filed an application on 17.12.2014 praying for summoning of the record from the management, which is consisting of attendance registers, wage records and leave register of Safaiwala/Workmen for the period from 1997 to 2011 apart from records of daily reports of Estate Department, appointments letters, and the details of the Proprietors/Directors. This application was opposed by the respondent/management.

7. By impugned order dated 04.08.2017, the Industrial Adjudicator disposed of the application dated 17.12.2014 with the observation that the consequences of the production/non-production of the requisite record on the part of the respondent/management shall be seen at the time of final adjudication and disposal of the matter in issue.
8. Learned counsel for the petitioner submits that the respondents have denied the relationship of employer and workman between the parties and in order to prove the same the workmen have filed certain photocopies of the documents of the management. He submits that on their application of admission and denial, the respondent/management has denied the documents and for that reason they were constrained to file an application for direction to the management to file the said record. He relies upon the judgment of Single Judge of this court in **Automobile Assoc.**

Upper India vs. P.O. Labour Court-II & Anr., 130 (2006)
DLT 160 to buttress his arguments.

9. It is noticed that the respondent/management, inter-alia, pleaded in its reply to the said application that they cannot be required by the petitioner to produce such record with respect to the claimants who were never employed by it in Delhi. It is further pleaded that the claimants have no concern with the separate establishment of the respondent in Delhi.
10. Sh. Harvinder Singh, learned counsel for the respondent, submits that the petitioner cannot challenge the interlocutory order in the writ jurisdiction. He submits that the petitioners are not the employee of the management. He submits that in the absence of the relationship of employer and employee between the parties and for want of territorial jurisdiction of the Industrial Adjudicator, application was not maintainable. He submits that the claimants/workmen were not employed in any establishment of the respondent in Delhi and so there is no question of its having any appointment letter, attendance register, leave register, etc.
11. I have heard the learned counsel for the parties.
12. It is settled principle of law that though this court has jurisdiction to hear the writ jurisdiction against the interlocutory orders but it must be on rare occasions. It is trite that primary burden to prove a plea is on a person so claiming. The burden of proof initially lies on the workman to prove that there was a

relationship of employer and workmen between the parties. In the present case, the relationship of employer and workmen has been denied by the respondent in its written statement. To discharge their initial burden, the petitioners have filed an application which was disposed of by the impugned order. In **Automobile Association Upper India (*supra*)**, a single Bench of this court has held that the workman can make an appropriate application calling upon the management to produce record in respect of his employment and in case the management fails to produce the same, the adverse inference is liable to be drawn against the management.

13. The Industrial Adjudicator while disposing of the application of the petitioner/workmen by impugned order has already observed that the consequence of production/non-production of the requisite record on the part of the respondent/management shall be seen at the time of final adjudication. This court does not find any illegality or perversity in the impugned order dated 04.08.2017.
14. The writ petition along with CM APPL. 14234/2018 is accordingly dismissed.

(VINOD GOEL)
JUDGE

MAY 21, 2018
“*shailendra*”