

made by the Labour Court on dated 10.11.2009. The Labour Court had answered the reference in favour of the respondent no.2.

4. Learned counsel for the petitioners contended that the petitioner no. 2 is a Director of the petitioner no. 1 - Company. According to him it is the company which can be proceeded against for the recovery of the amount as per the award. He made a grievance that the petitioner no. 2 was the Director of the Company and therefore no proceedings for recovery can be initiated against the petitioner no.2 in his personal capacity only because he is a Director of the Company. He submits that, it is only against the petitioner no.1 and the assets of the petitioner no.1 that can be proceeded against for recovery. He would further submit that there was no proper service of the summons of the reference and therefore the ex-parte award of the Labour Court is unjustified. He submits that the petitioners are in the process of filing appropriate application before the Labour Court to recall the ex-parte award or any other proceedings as may be permissible challenging the ex-parte award.

5. He would further submit that to show bonafides of

petitioner no.2, he is willing to deposit a substantial sum before the Industrial Court which has issued the recovery certificate.

6. Learned counsel for the respondents on the other hand vehemently opposed the petition. According to learned counsel, the petitioners have avoided to appear before the Labour Court. It is only after the recovery certificate is issued and steps are taken against the petitioners, then the present petition is filed. According to the learned counsel, the present petition is not bonafide and absolutely no reasons are stated even in this petition as to why the petitioners have not appeared before the Labour Court. He would further state that after publication of the ex-parte award, there is no question of the petitioners filing any application for recalling the ex-parte award.

7. Heard learned counsel for the parties. Now the recovery certificate to the tune of Rs. 4,77,170 has been issued. Though the learned counsel for the petitioners vehemently urged that, no proceedings can be initiated against the petitioners, in his personal capacity only because he is a Director of the Company, the learned counsel submitted that they are willing to make a substantial deposit to show their bonafides and petitioners may be granted an

opportunity to file appropriate proceedings for setting aside the ex-parte award.

8. In the interest of justice and with a view to give fair opportunity to the petitioners, in my opinion, the petitioners can be directed to deposit sum of Rs. 3,50,000/- before the Industrial Court. Learned counsel for the petitioners on instructions has agreed to deposit a sum of Rs. 3,50,000/- within a period of four weeks from today before the Industrial Court at Mumbai. Accordingly the said amount of Rs. 3,50,000/- be deposited before the Industrial Court within a period of 4 weeks and thereafter upon deposit the petitioners may take appropriate steps for setting aside the ex-parte award. The application obviously will be considered in accordance with law.

9. Needless to mention whatever remedies in law are available to the petitioners to challenge the ex-parte award, they are at liberty to resort to such remedies.

10. If the said amount of Rs. 3,50,000/- is not deposited within a period of 4 weeks from today, the further steps to enforce the said recovery certificate be taken.

11. If within a period of 4 weeks from today the amount of Rs. 3,50,000/- is deposited, the Collector is restrained from taking any steps in furtherance of the recovery certificate dated 7th October 2017 for a period of 8 weeks from today. In the event, the petitioners fails to obtain any interim orders in any proceedings which may be taken up by them within a period of 8 weeks from today, the Collector may proceed for the recovery of the entire balance amount as per the recovery certificate.

12. The respondent no.2 will be at a liberty to withdraw the amount deposited, if the petitioners fails to secure any restraining orders within a period of 8 weeks from today.

13. With these observations petition is disposed of. Rule disposed of in the above terms with no order as to costs.

(M. S. KARNIK, J.)