

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11821 of 2015

and

M.P.Nos.4 & 5 of 2015

The Chengalpattu Co-operative  
House Building Society Limited,  
represented by its President,  
No.34-A/1, Alagesan Road, Vedachalam Nagar,  
Chengalpattu - 603 001. .... Petitioner

...Vs...

1.The Presiding Officer,  
III Additional Labour Court,  
High Court Compound, Chennai - 104.

2.A.V.R. Kuppusamy,  
B.30, Alagesan Nagar,  
Chengalpattu Post and Taluk. .... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution  
of India praying to issue a Writ of Certiorari, calling for  
records of the first respondent pertaining to the award in  
I.D.No. 17 of 2014 dated 21.11.2014 and quash the same.

For Petitioner : Mr.V.Raghupathi

For R1 : Labour Court

For R2 : Mr.P.Anbarasan

O R D E R

The writ petition is filed challenging the ex-parte  
award. However, the grievance of the writ petitioner is that  
the ex-parte award was passed on 21.11.2014 and thereafter,  
the writ petitioner/Management filed an application to set  
aside the ex-parte award. The said petition filed along with  
the petition to condone the delay were returned by the first  
respondent/Labour Court and the counter filed was also  
returned along with the application.

2. The learned counsel appearing for the writ petitioner  
states that the Labour Court returned the applications to

condone the delay in filing the set aside ex-parte order as well as the petition filed to set aside the ex-parte order on the ground that the said petitions are not maintainable. In view of the judgment delivered by the High Court of Madras which is reported in 2014 (2) LLJ 2000 (Madras). In other words, it is stated by the Labour Court that after the publication of the award, the Labour Court became functus officio and therefore, no objection can be entertained after publication of the award.

3. This Court is of the considered opinion that the very same issue was adjudicated by this Court in W.P.No. 1426 of 2016 and the order was passed on 04.09.2019 in the said judgment. The legal principles settled by the Three Judges Bench of the Hon'ble Supreme Court in a case ["Haryana Suraj Malting Limited versus Phool Chand" reported in (2018) 16 SCC 567] was considered and the relevant paragraphs are extracted here under:

"4. The learned counsel for the writ petitioner further made a submission that the issue in this regard, has now been settled by the three Judges Bench of the Hon'ble Supreme Court in a case ["Haryana Suraj Malting Limited versus Phool Chand" reported in (2018) 16 SCC 567] from which paragraph Nos.34 and 37 are extracted as under:-

"34. In case a party is in a position to show sufficient cause for its absence before the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and

the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent."

5. The Apex Court of India in the case cited supra, unambiguously held that the Labour Court / Tribunal became not functus officio even after the publication of the Award, which has become enforceable.

6. It is contended that an Award to become binding, it should be passed in compliance with the principles of natural justice. An Exparte award cannot be said to be an award passed in compliance with the principles of natural justice. The scheme of the Industrial Disputes Act, as a whole, enumerates the procedures to be followed for effective adjudication of the disputes and to resolve the same, so also to maintain industrial peace, which would resolve development of our great Nation. Thus, an Award passed by following the procedures as contemplated and in compliance with the principles of natural justice alone can be considered as an award, which is to be enforceable and in all other circumstances, if an Interlocutory Application is filed to set aside an Exparte award and an award, which was not adjudicated properly are to be entertained by the Labour Court / Tribunal itself.

7. This being the principles to be followed, the Labour Court / Tribunal, on receipt of any such Interlocutory Application to set aside the Exparte award by condoning the delay in filing such Exparte award has to number the application, take up for hearing and consider the same on merits and in accordance with law. However, the Labour Court / Tribunal has to consider all such Interlocutory Applications and to be disposed of as expeditiously as possible. The genuinity or otherwise in respect of the reasons furnished by the respective parties are also to be considered. In any event, such applications filed to

condone the delay or to set aside the Exparte award shall be adjudicated and disposed of as expeditiously as possible, so as to avoid the idea of the parties to prolong and protract the final disposal of the disputes raised. Unnecessary adjournments of such Interlocutory Applications are to be avoided. Even in case, such adjournments are sought for by the parties, the said adjournments are to be rejected strictly and the matters are to be decided on merits. The practice of allowing the disputes to go Exparte and thereafter filing an application to prolong and protract the issues also can never be encouraged and such intentions or practices of the litigants or the lawyers are to be deprecated. Thus, the Labour Courts / Tribunal must be cautious and dispose of all such Interlocutory Applications as expeditiously as possible and by considering the genuinity of the reasons furnished in such Interlocutory Applications.

8. This being the legal principles to be followed as enunciated by the Apex Court in judgment cited supra, the present writ petition is to be considered. Consequently, the order dated 08.09.2015 passed in unnumbered Interlocutory Application of the year 2015 in I.D.No.95 of 2009 is quashed. The 1<sup>st</sup> respondent / Central Government Industrial Tribunal cum Labour Court is directed to number the Interlocutory Application filed to condone the delay in filing the set aside exparte petition and decide the same on merits and in accordance with law by affording an opportunity to all the parties concerned and thereafter, if the delay is condoned, then the other Interlocutory Applications are to be taken up for hearing and appropriate orders are to be passed as expeditiously as possible".

4. The Members of the Bar made a submission that large number of such applications are now pending before the various labour Courts / Tribunals across the State of Tamil Nadu or such applications were returned to the parties on the ground that the Tribunal /Labour Court become functus officio and as such no petition can be entertained.

5. In view of the judgment cited supra, the Labour Court / Tribunal are bound to entertain the applications to set aside the ex-parte award and the condone delay petition, if any, filed along with for adjudication and for passing orders on merits and in accordance with law. In this regard, the Registrar General of High Court is also directed to circulate the copy of this order to all the Labour Courts / Tribunals across the State of Tamil Nadu and Pondicherry and enabling the Courts to follow the judgment cited supra and accordingly entertained the applications filed in this regard.

6. In view of the facts and circumstances, the first respondent is directed to entertain the applications filed by the writ petitioner to set aside the ex-parte award as well as to condone the delay in filing the set aside ex-parte order and number the applications and decide the matter after affording opportunities to the writ petitioner on merits and in accordance with law as expeditiously as possible.

7. The copy is marked to the Registrar General of High Court of Madras, Chennai. The Registry is directed to return the original copy of the impugned order to the learned counsel, who filed the writ petition.

8. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

dua/pns

To

1.The Presiding Officer,  
III Additional Labour Court,  
High Court Compound, Chennai - 104.

Copy to: The Registrar General  
High Court, Madras.

(Registry directed to return the Original impugned order to the Counsel for the Petitionr)

VGI (CO)  
CB(27/11/2019)

सत्यमेव जयते W.P.No.11821 of 2015

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