

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.37588 of 2003
and
WPMP.No.45628 of 2003

M/s.Venu P.P.V. Spinning Mills (P) Ltd.,
Rep. by its Director Mr.V.Sekar,
A-4, Unit, The Salem Industries Co-op.
Estate Ltd., Udayapatty,
Salem 636 140. Petitioner

Vs.

1. M.Jaganathan
2. The Presiding Officer,
Labour Court, Salem. Respondents

Prayer : Writ petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari to call for
the records pertaining to the order dated 19.09.2003 passed by
the 2nd respondent in I.A.No.136 of 2003 in I.A.No.72 of 2001 in
I.D.No.518 of 2000 and pass orders.

For Petitioner : Mr.J.Ramakrishnan

For Respondents: Mr.K.V.Shanmuganathan,
for R1
R2 - Court

O R D E R

The Industrial Dispute raised by the first respondent herein
in the present Writ Petition, is in connection with his non-
employment. When the petitioner herein was set ex-parte and an
ex-parte award was passed, they have filed an application
seeking for condoning the delay in filing an application for
restoration of the order passed in the Industrial Dispute, which
came to be dismissed through the impugned order, and challenging
the same, the present Writ Petition has been filed.

2. The brief facts of the case are that when the first
respondent herein had raised industrial dispute in connection

with his non-employment, the petitioner herein had entered appearance through an advocate and filed counter. When the matter was originally listed on 25.07.2010, there was no appearance for the petitioner herein, and hence the petitioner was set ex-parte. The application to set aside the ex-parte order made by the petitioner herein came to be allowed on payment of costs. Thereafter, the petitioner was again set ex-parte for the second time on 31.07.2001 and an ex-parte award was passed on 31.07.2001. The petitioner herein had filed another application to set aside the ex-parte award. When the said application was listed, the petitioner herein had again chosen not to appear before the Labour Court and hence, the application to set aside the ex-parte award, came to be dismissed. As against the same, the petitioner had filed another application to condone the delay in filing the application to restore the earlier application to set aside the ex-parte award, which also came to be dismissed, by way of the present impugned order.

3. The learned counsel for the petitioner submitted that originally, the Industrial Dispute itself has no merits, since it is liable to be dismissed on the ground of laches. Even otherwise, the learned counsel submitted that there are no merits to establish that the first respondent herein is entitled for reinstatement. While that being so, the petitioner herein had adduced sufficient reasonable cause for not appearing before the Labour Court on the day when the application seeking to restore the earlier application to set aside the ex-parte award was heard, which aspect has not been considered by the Labour Court.

4. It is the submission of the learned counsel for the petitioner that the application to condone the delay has to be considered leniently and the merits of the case should also be looked into for the purpose of condoning the delay. Since there was reasonable cause assigned in the affidavit filed in support of the main application, the counsel submitted that a lenient view can be extended and the application should be allowed.

5. The learned counsel for the first respondent submitted that the petitioner has been set ex-parte on two occasions earlier and the present application has also been dismissed for default. Since the Labour Court earlier had taken a lenient view, when the application was filed to set aside the ex-parte order by putting the petitioner on terms, in view of the consistent conduct of the petitioner thereafter, the delay should not be condoned.

6. I have given careful consideration to the submissions made by the respective counsels.

7. It is not in dispute that the application seeking to condone the delay requires to be dealt with leniently and the only aspect which can be gone into for the purpose of condoning the delay is as to whether, the cause given by the petitioner in respect of the delay, is sufficient or not. But at the same time, the Hon'ble Apex Court as well as this Court has held in various decisions that such leniency can be extended only to a person, who is vigilant and shows anxiety in getting along with the case. In the present case, it is manifest that the petitioner has not been vigilant enough throughout the proceedings in spite of certain indulgence extended by the Labour Court.

8. When the petitioner was originally called and set ex-parte on 25.07.2000, the application filed by him to set aside the ex-parte order came to be allowed on payment of costs. When the case was posted for enquiry, the petitioner had again failed to appear for enquiry for the second time and hence, he was set ex-parte on 31.07.2001 and ex-parte award was passed on 31.07.2001. Thereafter, an application came to be filed to set aside the ex-parte award. When the application was listed for hearing, the petitioner for the third time had failed to appear before the Court, which constrained the Labour Court to dismiss the application on 24.06.2002.

9. On a cogent appraisal of the conduct of the petitioner, it can be clearly held that the petitioner was never vigilant in conducting the case, nor has shown any anxiety to get along with the case. In this background, the reason assigned by the petitioner for his non appearance on 24.06.2002 was looked into. According to the petitioner, when the application to set aside the ex-parte award dated 24.06.2002 came up for hearing, the Director of the petitioner-Mill had stated that he had to attend the cremation ceremony of his close relative and therefore, he had not attended the enquiry. Thereafter, it is his statement that the Textile Business was going towards downfall and he had attempted to find alternative ways to standardise his business and therefore he had travelled to Chennai, due to which, he could not communicate his counsel in time to file a petition to restore the application seeking to set aside the ex-parte award.

10. Whether such a reason could be termed as a sufficient cause, also requires to be looked into, in the light of the previous conduct of the petitioner. As observed earlier, on two occasions, the petitioner was set ex-parte. Insofar as the application to restore the earlier application to set aside the ex-parte award is concerned, the only reason assigned for the delay is that the Director of the petitioner Mill was in Chennai in connection with his business. In the given set of facts of

this nature, when the petitioner was already set ex-parte twice, they should have been more vigilant, and the present impugned application ought to have been filed in time. A mere statement that there was a downfall in the business and the Director had to travel to Chennai, cannot be reasonable or sufficient cause for not filing the application in time. If such a reason was real and genuine, the Director at least ought to have produced some evidence before the Court to establish that he was physically not available in Salem to instruct his counsel, which exercise has also not been done in the present case.

11. Insofar as the merits of the dispute is concerned, the petition in which the Industrial Dispute raised by the first respondent herein was perused. Therein, it is stated that the employee was not served with any notice except the suspension order and the ground of violation of the principles of natural justice has been raised. Such a ground requires to be determined only on the basis of a proper trial and at this juncture, it cannot be held that the dispute itself is totally devoid of any merit. As such, the ground raised by the learned counsel for the petitioner that he has valid defence in the main Industrial Dispute, cannot be countenanced.

12. For all the foregoing reasons, this Court is of the view that the petitioner was never vigilant in conducting the dispute before the Labour Court and as such, the Labour Court was right in exercising its discretion to reject the petitioner's application to condone the delay in restoring the earlier application to set aside the ex-parte award. Hence, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

pvs

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To
The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.K.V.Shanmuganathan, Advocate, SR.No.41850
+1cc to Mr.J.Ramakrishnan, Advocate, SR.No.41551

W.P.Nos.37588 of 2003

Kak (27/07/2019)
Kak (28/08/2019)