

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-11-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.9155 of 2011

And

M.P.No.1 of 2011

U.S.Modi

.. Petitioner

-vs-

1.K.Ramesh

2.The Presiding Officer,
III Additional Labour Court,
Chennai.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records and proceedings of the second respondent culminating in the order dated 19.06.2009 passed in C.P.No.332 of 2003 and its consequential order passed in I.A.Nos.302 and 303 of 2009 in Claim Petition No.332 of 2003 dated 15.02.2011 and quash the same.

For Petitioner : Mr.Vivek Menon for
M/s.Pushpa Menon.

For Respondent-1 : No Appearance

For Respondent-2 : Labour Court

ORDER

The order dated 19.06.2009 passed by the Labour Court in Claim Petition No.332 of 2003 and the consequential order passed in I.A.Nos.302 and 303 of 2009 in Claim Petition No.332 of 2003 dated 15.02.2011, are under challenge in the present writ petition.

2. The writ petitioner-Company is engaged in the business of leasing and sub leasing immovable property such as residential and commercial properties. The first respondent-employee was employed under the writ petitioner-Management and an application was filed under Section 33-C(2) of the Industrial

Disputes Act, 1947. An ex parte order was passed by the Labour Court in the Claim Petition No.332 of 2003. The writ petitioner-Company filed an interlocutory application to set aside the ex parte order passed in the claim petition and filed another interlocutory application to condone the delay in filing the petition to set aside the ex parte order. Both the interlocutory applications were dismissed by the Labour Court on the ground that the Labour Court become functus officio, as there is no provision to entertain an interlocutory application to set aside the ex parte Award passed. The Labour Court made a finding that the Labour Court has no powers to ex parte the order passed and as far as the claim petition orders are concerned, it need not be published in the Government Gazette. Challenging the said order, the present writ petition has been filed.

3. This Court is of the considered opinion that the issue in this regard was considered by the Three Judges Bench of the Hon'ble Supreme Court of India in the case of Haryana Suraj Malting Ltd vs. Phool Chand [(2018) 16 SCC 567], wherein the Supreme Court, in paragraph-37 held as under:-

"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."

4. The Hon'ble Supreme Court in unambiguous terms held that 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.

5. This being the principles settled by the Apex Court of India, the Labour Court cannot reject the Interlocutory Application filed to set aside the ex parte order merely on the ground that the Labour Court has no jurisdiction. Once the Labour Court passed an ex parte order, entertaining the interlocutory application to set aside the ex parte order is to be decided on merits and the findings of the Labour Court that the Labour Court became functus officio is not in consonance with the legal principles settled by the Apex Court of India.

6. Accordingly, the order dated 19.06.2009 passed by the Labour Court in Claim Petition No.332 of 2003 and the consequential order passed in I.A.No.302 and 303 of 2009 in Claim Petition No.332 of 2003 dated 15.02.2011, are quashed and the second respondent-Labour Court is directed to restore the petitions on file and decide the matter on merits and in accordance with law, by affording opportunity to all the parties concerned, as expeditiously as possible, without causing any undue delay.

7. Consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Svn

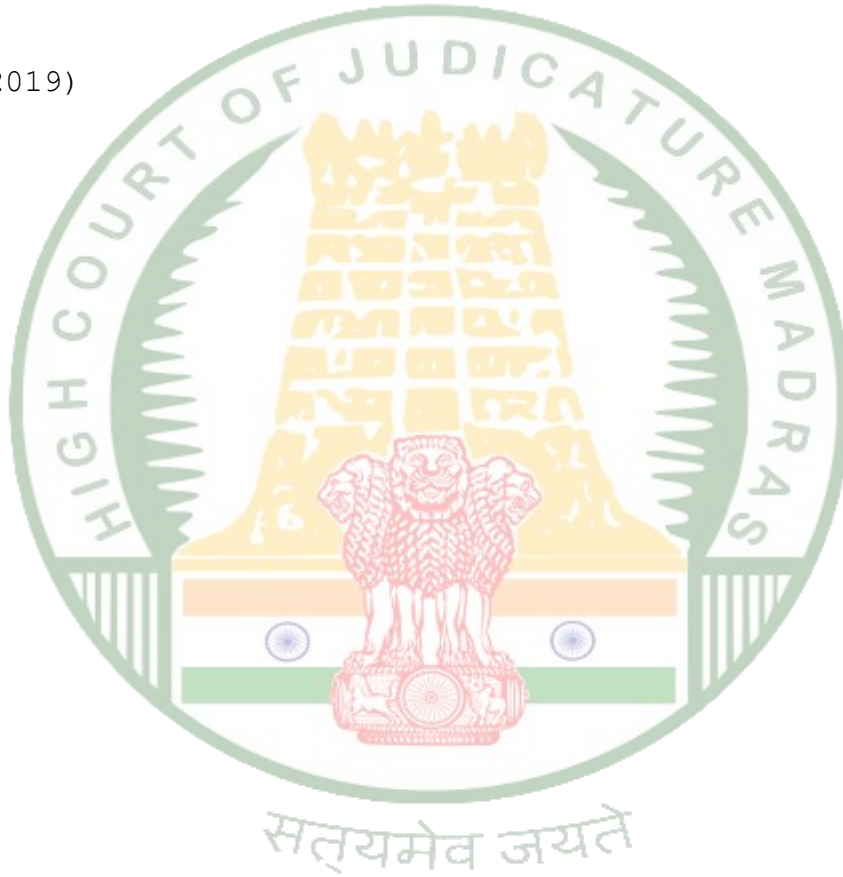
To

The Presiding Officer,
III Additional Labour Court,
Chennai.

+1 CC to M/s. Pushpa Menon, Advocate sr 93922.

W.P.No.9155 of 2011

GMR (CO)
SP (30/12/2019)



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