

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 21.02.2019****CWP No.4074 of 2019**

Ranbir Singh

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal -cum- Labour Court, Amritsar &
another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishnu Kaushik, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J.

1. The petitioner runs a brick kiln in the name and style of M/s Gagan Bricks Supply situated in Village Mehma Pandori, Amritsar. The 2nd respondent was employed as Jamadar in the brick kiln. He filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short 'the Act') claiming unpaid wages before the Industrial Tribunal, Amritsar. The petitioner-employer appeared and filed written statement. He skipped the proceedings and was proceeded against ex parte on 16.12.2016 and obviously could not cross-examine the witnesses produced by the 2nd respondent/workman. An ex parte order was passed on 10.11.2017 against the petitioner.

2. Thereafter, the petitioner filed an application for setting aside the ex parte proceedings vide dated 16.12.2016 and the ex parte order dated

10.11.2017 stating that he came to know about the ex parte order “*a few days back when he received the summons from the Executing Court*”. The execution proceedings were fixed for 25.05.2018.

3. On notice, 2nd respondent/workman filed reply on 14.08.2018. He asserted in his objections to the application that the proceedings in the original application went on for eleven months after which the order was passed proceeding ex parte against the employer. Eleven months is a lot of time elapsed to plead lack of knowledge of ex parte proceedings after filing written statement contesting the claim for money due by the workman, so this plea is not available to the petitioner-employer any more. Not only was the written statement filed by the petitioner-employer, he was present at the time issues were framed. But he disappeared at the stage of evidence of the workman. Workman argued that absence of employer was intentional and, therefore, the application deserves to be dismissed and also there is insufficient ground to set aside the ex parte order. The application has been dismissed vide order dated 07.12.2018 holding that the petitioner had very much knowledge regarding the pendency of the case against him.

4. The Tribunal at Amritsar dismissed the application for the reason that the petitioner has not been able to show even prima facie to succeed on the contention regarding lack of knowledge when on the other hand it is fully established on record that he had engaged one Mr. Sanjeev Kaushal as his authorized representative and had tendered written statement. The act of remaining absent is intentional to delay the proceedings as is the wont of many crafty employers who allow court to proceed ex parte and then expect a superior court to act in their aid in the name of serving the ends of

justice and that it might relent for a decision on merits of the dispute. An ex parte award/order is as good as any other order till it is not set aside. The plea of lack of knowledge of order proceeding against the petitioner ex parte and then disappearing for eleven months till the final ex parte order came on 10.11.2017 has a ring of falsity. The petitioner seems to have been only buying time somehow or the other. The gap of eleven months has not been explained by sufficient cause.

5. Today, if the petitioner blames his counsel/authorized representative for forsaking him, he may seek his remedies against him, but this court would not act in aid of a defaulting party for the asking to protract the litigation by reopening the case when there is hardly any justification to do so. If cogent reasons are supplied by the Tribunal in reaching its conclusion, which is a possible view, then this court will not substitute the opinion of the Tribunal formed objectively as the first and last court of fact only to take a different view on the same material. The workman has rightly placed reliance on the judgment of the Supreme Court in Gurcharan Singh Vs. Surjit Singh (D) through LRs, (2014) 2 SCC 140 noticed in the impugned order involving a somewhat similar situation where defendants filed written statement, but during recording of evidence, they absented themselves resulting in an ex parte decree, then the Supreme Court held there is no reason to entertain a special leave petition where the application for setting aside the ex parte decree was disallowed by the trial court and the appellate court.

6. Thus, I find no fundamental error apparent on the face of record or any illegality committed by the Industrial Tribunal at Amritsar in

dismissing the application for setting aside the ex parte order in proceedings which are in the nature of execution of an existing right which can be computed in terms of money.

7. Accordingly, the instant petition is dismissed being devoid of merit.

21.02.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No