

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP No.10386 of 2019
Date of Decision : 08.05.2019**

ROHTASH.

...PETITIONER

V/S

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, PANIPAT AND ANOTHER.**

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Rahul Jaswal, Advocate for the petitioner.

B.S. WALIA, J. (ORAL)

[1] Challenge in the writ petition is to the ex parte award Annexure P-2 dated 27.09.2017 as well as order Annexure P-3 dated 11.03.2019 passed by respondent No. 1 dismissing the application for setting aside ex parte award. Learned counsel contends that the impugned orders are legally unsustainable, therefore liable to be set aside. Learned counsel further contends that without going into the merits of the case qua ex parte award, the matter can be remanded by setting aside order Annexure P-3 and directing the Industrial Tribunal cum Labour Court Panipat to decide the application for setting aside ex parte award Annexure P-2 dated 27.09.2017 in accordance with law.

[2] Notice of motion to respondent No.2 qua order Annexure P-3 only.

[3] Mr. Nishant Sharma, Advocate for Mr. Hitesh Pandit, Advocate accepts notice on behalf of respondent No.2 and states that he does not wish to

file reply and would argue the case. Learned counsel contends that the impugned order Annexure P-3 has rightly been passed by the Industrial Tribunal cum Labour Court Panipat.

[4] I have heard learned counsel for the parties. Application, Annexure P-2 for setting aside *ex parte* award was dismissed vide order Annexure P-3 on the ground that the same had been filed beyond 30 days from the date of publication of the award in the Gazette, therefore the Labour Court had become functus officio and was not entitled to decide the application in view of the decision of Hon'ble the Supreme Court in **Sangham Tape Company vs Hans Raj, (2005) 9 SCC 331**.

[5] Hon'ble the Supreme Court in '**Haryana Suraj Malting Limited** *versus Phool Chand*'-2018(16) SCC 567 considered the question whether the Industrial Tribunal / Labour Court was functus officio after the award had become enforceable and thus prevented from considering an application for setting aside of an *ex parte* award. Relevant extract of the decision in Phool Chand's case (supra) is reproduced as under :

“35. 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. ”

[6] As per the decision of Hon’ble the Supreme Court in Phool Chand’s case (supra) where a party is able to show sufficient cause within a reasonable time for its non-appearance in the Industrial Tribunal/Labour Court when it was proceeded ex parte, it is incumbent upon the Industrial Tribunal/Labour Court to consider the application for setting aside the ex parte award and the same cannot be rejected on the ground that it was filed after the award had become enforceable. In the circumstances, the writ petition is liable to be allowed and is accordingly allowed. Impugned order Annexure P-3 is set aside and the matter is remanded to the learned Industrial Tribunal-cum-Labour Court, Panipat to consider and decide the application for setting aside the *ex parte* award Annexure P-2 dated 27.09.2017 on merits in accordance with law by taking into account the decision of Hon’ble the Supreme Court in ‘**Phool Chand’s** case (supra.

[6] Parties through counsel are directed to put in appearance before the learned Industrial Tribunal-cum-Labour Court, Panipat for proceedings in accordance with law on 03.06.2019.

(B.S. WALIA)
JUDGE

May 08, 2019
‘Rajneesh’

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No