

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

CWP No.21652 of 2013 (O&M)
Date of Decision:15.1.2019

Binder Kumar

... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Bathinda & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Raj Kaushik, Advocate for the petitioner

Mr. Vaibhav Goel, Advocate for
Mr. Vaneet Soni, Advocate for respondent no.3

RAJIV NARAIN RAINA, J.

1. Darshan Lal, respondent no.2 moved an application under Section 33 C (2) of the Industrial Disputes Act, 1947 (for short "the Act of 1947") in the Court of Presiding Officer, Industrial Tribunal, Bathinda in January, 2002. The application was decided after about ten years on 9th February, 2012 in his favour. The unsuccessful respondent has preferred this petition assailing the order.

2. The facts of the case are that the present second respondent claimant worked as a brick kiln labour for moulding bricks. He worked during the period 8.12.2000 to 8.6.2001 at the rates fixed for '*Bharai*' (filling of brick moulds) by the Punjab Government. The labour charges for preparing kacha bricks came out to ₹ 78,664/- out of which a sum of ₹ 33,000/- was paid by the respondent M/s K.K.Bricks Co., Village Dhingawali Tehsil Abohar, District Fazilka through Proprietor/owner Binder Kumar, the present petitioner. A sum of ₹ 45,664/- was outstanding and recoverable from the petitioner.

3. On notice to M/s K.K.Bricks Co., Shri Binder Kumar appeared before the Tribunal and objected that he was neither proprietor nor partner of M/s K.K.Bricks Co. However, while refuting the employee-employer relationship, he went on to speak in his written statement that the “respondent” does not owe any amount to the applicant-Darshan Lal, rather the applicant owed a sum of ₹ 981/- to the employer, and therefore, the matter needs adjudication under Section 10 (1) of the Act of 1947 and an application under Section 33 C (2) is not maintainable and is liable to be dismissed on merits. He admitted that the claimant started working in the brick-kiln on 8.12.2000 at the labour rates fixed by the Punjab Government and bonus was payable at the rate of 8.33%.

4. He went to specifically plead that Darshan Lal had received payments amounting to ₹ 33,000/- from the employer as against the total charges to the tune of ₹ 32,019/-. The claim of the applicant is vague and highly exaggerated. He went on to say that claimant Darshan Lal owes a sum of ₹ 981 to the employer. The applicant had received payments amounting to ₹ 33,000/- from the employer as against total labour charges amounting to ₹ 32,019/-. He said that the applicant has shown *bharai* of 8 lac bricks during the period 8.12.2000 to 26.2.2001 which is not possible during winter months December to February when bricks take a lot of time to turn dry and fit to be transported for *bharai* in brick kilns. There was a strike at the brick kilns in the year 2000 and they started functioning late in that year. He admitted that the applicant worked during the period 8.12.2000 to 20.5.2001. The vagueness of the claim is also evident, says Binder Kumar, from the fact that the amount of bonus claimed in the application does not match with the amounts of

labour charges mentioned in the claim application. He made calculation in tabulated form in paragraph 2 of his reply showing a total of ₹ 32,019/-. He further stated that the applicant got payment of ₹ 3000/- from the employer on 20.5.2001 and thereafter, stopped working and left with his luggage without informing the employer. When the applicant approached the employer for work in the next season, the employer asked the applicant to pay back the outstanding amount of ₹ 981/- of the last season. The applicant did not respond and instead of paying the outstanding amount, the applicant has filed the vague and wrong claim to counter the claim of the employer and to harass it. The written statement is dated 14th August, 2002.

5. It is of importance to note that Binder Kumar in his written reply filed before the Tribunal denied that he was partner of M/s K.K. Bricks Co. However, if it wasn't him he did not name the owner of M/s K.K.Bricks Co. It was only during his evidence that he produced RW2/Ram Pal son of Banarsi Dass of Village Digawali, Abohar as his witness. Ram Pal in his deposition claimed that he was owner of M/s K.K.Bricks. He did not have any partner. He deposed that Binder Kumar is neither partner of the Brick Kiln nor is he an employee. Binder Pal (Kumar) was partner in BSK Brick Kiln which is situated at Dharampura which falls 7 to 8 Kms away from his brick kiln. He admitted that *“Binder Pal is giving some help to me in my brick kiln”*. He admitted that claimant Darshan Lal worked as a labourer in his brick kiln for the period 8.12.2000 to 8.6.2001. He denied that Darshan Lal had moulded one lac bricks. In his cross-examination, he deposed as correct that the workman moved an application before the Work Inspector Grade-II, Abohar in which he says “we” appeared and “we” give reply before the Work

Inspector. The word “we” is significant in the context as it appears to represent both RW2 Ram Pal and the present petitioner Binder Kumar and would appear to mean that they are one and the same person as far as the claim of Darshan Lal is concerned.

6. The sole respondent before the Tribunal was arrayed as follows:-

“M/s. K.K. Bricks Co. Village Dhingawali Tehsil Abohar District Fazilka through its Proprietor/Owner Binder Kumar”.

7. In the Memo of Parties in the present writ petition, the name of the Proprietor/Owner has been changed to read as follows:-

“M/s K.K.Bricks Co. Village Dhingawali Tehsil Abohar District Fazilka through its Proprietor/owner Sh. Ram Pal”.

8. Changing cause title in this manner is impermissible without leave of the court. Had an objection been put by the Registry at the time of filing of the petition, it would seem to me to have been insuperable. Binder Kumar cannot pass on the buck to Ram Pal like this.

9. For the cogent reasons recorded by the Tribunal in the impugned order while allowing the claim, it has held that even though RW1 Binder Pal (sic. Binder Kumar) has denied ownership over the brick kiln, his version in this regard is not reliable, especially in the circumstances that he has narrated all the facts stating that applicant has exaggerated the claim and further that a sum of ₹ 981/- is recoverable from the applicant by the employer and further that a sum of ₹ 33,000/- was paid against the total charges to the tune of ₹ 32,019/-. The Tribunal

correctly and rightly concluded that if he is not owner or connected with

the respondent, how and from where he has stated of these facts. This is a hurdle learned counsel for the petitioner is unable to cross. Still further, the Tribunal has held and rightly so that as per Section 25-D of the Act, a duty has been cast on every employer to maintain the muster-rolls and to provide for making entries, especially by the workman and to maintain record with regard to payments, but in the instant case, no such record has seen the light of the day. The respondent was under obligation to keep and maintain the record showing number of bricks moulding/prepared by applicant during the period 8.12.2000 to 8.6.2001. Petitioner should also possess the record of total labour charges as well as amount paid to the applicant, but no such record was maintained for the reasons best known to Binder Kumar and I would say Ram Pal. After appreciating the evidence brought on record, the Tribunal concluded that in its considered view, there is no cogent or convincing evidence brought on record by the respondent-Management to rebut the claim of the applicant-claimant. Accordingly, the Tribunal has held that the claimant is entitled to recover ₹ 45,664/- which is money due and recoverable from the respondent-Management to which he is legally entitled. If the petitioner Binder Kumar had nothing to do with M/s K.K.Bricks, he could have filed a short affidavit saying that he is neither owner nor proprietor of the Brick Kiln and knows nothing about the case. But he chose not to do so and to his peril entered the arena of contest and by this act and conduct he has merged his identity with M/s K.K.Brick Kiln which he can no longer distance himself from.

10. To the reasoning in the record of the Tribunal, I would add only that introduction of Ram Pal as RW2 to shrug responsibility was in excess of pleadings submitted by Binder Kumar before the Tribunal

while contesting the claim on merits without disclosing any other person's identity or civil liability and has accordingly suffered the result of litigation. It is settled law that evidence beyond pleadings is not to be read.

11. In view of the above, I find no merit in this petition which is accordingly dismissed with costs of ₹ 10,000/- to be paid to the workman/2nd respondent to defray his litigation expenses, by maintaining the impugned order dated 9th February, 2012 passed by the Presiding Officer, Industrial Tribunal, Bathinda.

15.1.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No