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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: - 13.02.2019

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W.P.(C) 426/2017 & C.M.No.1989/2017

MANORANJAN TV

..... Petitioner

Through Mr.Ankur Chhibber with Mr.Aditya Chhibber, Advs.

versus

NEERAJ SINGH RAHTOR & ANR.

..... Respondent

Through Mr.Rajat Sharma, Adv for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the ex-parte award dated 01.12.2014 passed by the learned Labour Court IX, Delhi in I.D.No.663/2011. The petitioner also seeks quashing of the consequential recovery notice dated 30.12.2016, whereby the petitioner was asked to deposit with the respondent no.2 a sum of Rs.4,97,000/- alongwith interest @ 8% p.a. towards backwages of the respondent no.1 as directed under the impugned award.

2. Mr.Ankur Chhibber, learned counsel for the petitioner states that the impugned award, has been passed without giving any opportunity to the petitioner to be represented before the learned Labour Court. He states that even though the respondent no.1 was well aware that the petitioner had already changed its address from C-118 Dayanand Colony, Lajpat Nagar, New Delhi to A-175, Dayanand

Colony, Lajpat Nagar, New Delhi the respondent no.1 had deliberately mentioned only the old address of the petitioner in its claim statement before the learned Labour Court, due to which the petitioner was not aware about the pendency of the proceedings before the learned Labour Court.

3. Mr.Chhibber submits that the petitioner learnt about the impugned said award only after receipt of a demand notice dated 20.01.2016 issued by the respondent no.1, whereafter the petitioner took steps to inspect the record from where it transpired that one Mr.Piyush Chabra had appeared on behalf of the petitioner on one date, before the Labour Court whereafter he stopped appearing and the petitioner was, therefore, proceeded ex parte, leading to the passing of the impugned ex parte award.

4. Mr.Chhibber further submits that as Mr Piyush Chabra was neither known to the petitioner nor have been ever authorised to appear on its behalf, the petitioner had therefore issued a notice dated 08.02.2016 to the aforesaid Mr.Piyush Chabra which had remained unanswered. In the notice, the petitioner had also accused Mr.Piyush Chabra of having filed his memo of appearance in connivance with the respondent no.1.

5. Mr.Chhibber draws my attention to the order sheets of the learned Labour Court, which have been annexed as annexure P-7 to the present writ petition and states that even though notice in the aforesaid I.D. was issued on 28.04.2012, the petitioner was never served, which fact is evident from the subsequent orders passed by the learned Labour Court. Mr.Chhibber further submits that, in fact, a

perusal of the order dated 08.03.2013 in itself shows that till that date service to the petitioner could not be effected, as it was reported that the petitioner had left the premises at the address furnished in the claim petition. On the said date, the respondent no.1 reiterated before the Labour Court that the petitioner was still working at the same address once again and the Court, therefore, directed issuance of fresh notice to the petitioner on the same address.

6. The record further shows that on 12.08.2013 even though there was no report regarding the petitioner having been served, one Mr.Piyush Chabra had appeared before the Court on behalf of the petitioner and had filed his memo of appearance. It is noteworthy that no Vakalatnama or Power of Attorney or authorisation of any kind signed by the petitioner was ever placed on record . It also transpires that the aforesaid Mr.Piyush Chabra had appeared before the Court only on a solitary occasion i.e. 12.08.2013 and had not appeared on 25.11.2013, the date fixed for filing a written statement. Resultantly, the learned Labour Court vide its order dated 25.11.2013 proceeded ex parte against the petitioner, whereafter the impugned Allowed, subject to all just excpetions. The application stands disposed of. Ex-Parte award was passed, on the basis of the ex parte evidence led by the respondent no.1.

7. Mr.Chhibber thus contends that the perusal of the record in itself shows that the petitioner was never served with any notice of the proceeding in the Industrial Dispute and the learned Labour Court has by merely relying on the appearance of one Mr.Piyush Chabra on the petitioner's behalf not only proceeded ex parte against the petitioner,

but had also passed the impugned award on the basis of the respondent's ex parte evidence. He, therefore, prays that the impugned award as also the consequential recovery notice be quashed.

8. On the other hand, Mr.Rajat Sharma, learned counsel for the respondent no.1 while not disputing the petitioner's plea that there is nothing on record to show that the petitioner had ever been served or that it had ever authorised Mr.Piyush Chabra to appear on its behalf, the petitioner's states that once Mr.Piyush Chabra had entered appearance on behalf of the petitioner, there was no reason for the learned Labour Court to issue any further notice to the petitioner. He, thus, states that the learned Court was fully justified in proceeding ex parte against the petitioner after it found that its authorised representative had failed to file any reply or appear before the Court.

9. I have carefully considered the submissions of the learned counsel for the parties and with their assistance perused the records. In the light of the facts emerging from the record the sole issue which arises for my consideration is whether the learned Labour Court was justified in proceeding ex parte against the petitioner and consequently passing an ex parte award against the petitioner.

10. While Mr.Chhibber vehemently contends that respondent's statement before the Labour Court that the petitioner was working at the same address was a deliberate attempt on his part to mislead the Court as he was well aware that the Petitioner had already shifted from the said premises which fact was also evident from the records of Registrar of Companies, Mr.Rajat Sharma, learned counsel for the respondent no.1 has vehemently denied the same. The fact, however,

remains that notice to the petitioner was again directed to be issued on the same address as had been furnished in the respondent's claim petition, even after it had been reported that the petitioner had left the premises; which fact finds mention in the Courts' order dated 08.03.2013.

11. It appears that the learned Labour Court has without even determining, as to whether, Mr.Piyush Chabra was actually authorised to appear for the petitioner hastened not to proceed ex parte against the petitioner. It is thus evident that the petitioner did not get any opportunity to contest the matter because it did not have any knowledge about the pendency of the Industrial Dispute before the learned Labour Court.

12. In my view once, it is undisputed that there is nothing to show that the petitioner was ever served with any notice regarding the proceedings before the learned Labour Court or to show that Mr.Piyush Chabra was ever authorised by the petitioner to appear on its behalf, there is no reason as to why the petitioner does not deserve be granted an opportunity to contest the respondent's claim on merits.

13. For the aforesaid reasons, the impugned award dated 01.12.2014 is wholly unsustainable and is set aside. Consequently the impugned recovery notice dated 30.12.2016 is also set aside. The matter is remanded back to the learned Labour Court for consideration of the matter de novo after giving an opportunity to the petitioner to file its written statement to the respondent's claim petition.

14. Keeping in view the fact that the termination relates to the year 2009, the learned Labour Court is requested to expeditiously decide

the Industrial Dispute. The parties are granted liberty to file an application before the learned Labour Court in order to enable the Court to fix a convenient date for proceeding with the matter as directed hereinabove.

15. The writ petition is disposed of in the aforesaid terms.

16. The Registry is directed to forthwith refund the amount deposited by the petitioner along with the interest accrued thereon and releasing the remaining sum of Rs.20,000/- to the respondent no.1 as deposited by the petitioner towards litigation expenses.

FEBRUARY 13, 2019/sr

**(REKHA PALLI)
JUDGE**