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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :- 05.11.2019

+ W.P.(C) 11487/2016 & C.M. No.45127/2016 (for stay)

MANOJ KUMAR JAIN Petitioner
Through: Mr.Manish Bhardwaj, Adv.

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through: Mr.Sanjeev Kumar Singh with
Mr.Raghuvendra Pandey, Adv. for
R-1.
Mr.Triloki Pandit, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition has been preferred by the petitioner impugning the order dated 06.08.2014 passed by the competent authority under the Delhi Shops and Establishments Act, 1954 ('the Act' for short). Under the impugned order, the competent authority held the respondent no.2/claimant to be entitled to receive an amount of Rs.27,014/- as unpaid wages from the petitioner, after coming to the conclusion that he had not been paid his wages/salary for the period between 01.02.2013 to 30.04.2013.

2. The facts in brief are that the respondent no.2, claiming that he had been employed as a 'Checker' with M/s Sona Sunehari through

the respondent no.3/Contractor with last drawn monthly wages at Rs.7722/-, approached the competent authority under Section 21 of the Act, complaining that he had not received his wages for the period between 01.02.2013 and 30.04.2013. In his claim petition, the respondent no.2 had arrayed the petitioner as the proprietor of M/s Sona Sunehari, while arraying respondent no.3 as the Contractor of M/s Sona Sunehari. Despite repeated opportunities, neither the petitioner nor the Contractor nor any authorised representative of M/s Sona Sunehari filed any reply before the competent authority, which subsequently proceeded ex-parte against them and passed the order impugned herein on the basis of the unrebutted claims of the respondent no.2. Apart from holding the claimant to be entitled to receive an amount of Rs.27,014/- from the petitioner, as noted above, the impugned order also records that in the absence of any documents to prove a verbal/written agreement between the petitioner and the Contractor and any independent address of the Contractor being made available before it, the claimant was entitled to receive payment of his dues from the petitioner himself. The competent authority, however, granted liberty to the petitioner to recover this amount from the Contractor. Aggrieved by this order, the present petition has been preferred.

3. Assailing the order passed by the competent authority, learned counsel for the petitioner submits that the alleged Contractor Sh. Amir Khan, was the proprietor of an independently run business of readymade garments operating in the name of M/s.Aarzo and was, in fact, the actual employer of the claimant. He submits that the claimant

had been engaged solely by Sh. Amir Khan in order to discharge duties with respect to his own enterprise, M/s. Aarzo, and the petitioner, who was the landlord of the premises where the business of M/s Aarzo is being conducted, used to purchase readymade goods from them. He further submits that the claim petition filed before the competent authority incorrectly refers to his tenant, Sh. Amir Khan, as the Contractor of M/s Sona Sunehari. By drawing my attention to Annexure P-1, whereby the bills and delivery challans purportedly issued by M/s Aarzo in favour of M/s Sona Sunehari have been placed on record, he submits that M/s Arzo was supplying goods to the petitioner and had M/s Arzo been his Contractor, then such bills and challans could not exist. He further submits that once the competent authority itself found that the respondent no.2 was entitled to receive his wages from the alleged Contractor, i.e., Sh. Amir Khan, the petitioner cannot be saddled with this liability merely because his address was not traceable. He, therefore, submits that the impugned order is wholly perverse and is liable to be set aside.

4. I have considered the submissions of the learned counsel for the petitioner and find no merit in any of the contentions raised by him.

5. A perusal of the record shows that in his claim petition before the competent authority, the claimant/respondent no.2 had specifically described Sh. Amir Khan as a Contractor of the petitioner's concern, viz. M/s Sona Sunehari, which fact was never denied by the petitioner before the Court by filing any reply thereto. Pursuant to this Court's order, the record of the competent authority was summoned and a perusal thereof shows that the petitioner had appeared before the

competent authority on 23.12.2013, when the matter was adjourned to 05.02.2014; however, the petitioner was absent on every date of hearing thereafter. Consequently, neither was the stand of the petitioner placed before the competent authority, nor were the alleged bills raised by M/s Arzo in favour of the petitioner's concern ever placed before the competent authority when the impugned order came to be passed. In these circumstances the alleged bills filed before this Court, having been placed on record for the very first time, cannot be adverted to for the purpose of examining the correctness of the impugned order. In any event, given that the competent authority has specifically granted liberty in this regard, the petitioner may claim the amount payable by him to respondent no.2 under the impugned order, from Sh. Amir Khan.

6. I, thus, find no infirmity in the impugned order warranting exercise of my writ jurisdiction.

7. The writ petition is accordingly, dismissed along with the pending application.

REKHA PALLI, J.

NOVEMBER 05, 2019

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