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

Date of decision: 30.01.2019

+ **W.P.(C) No.13414/2018 & C.M. No.52245/2018 (for stay)**

KOTAK MAHINDRA BANK LTD. Petitioner

Through: Ms.Gurmeet Bindra, Adv.

versus

MINISTRY OF LABOUR AND EMPLOYMENT AND ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner/Management impugns order dated 11.05.2018 passed by the learned Labour Court whereby the petitioner's right to further cross-examine the respondent no.2/workman was closed. The petitioner also impugns order dated 05.10.2018 vide which its application seeking recall of the workman for cross-examination was rejected.

2. Notice of the present petition was issued by this Court on 12.12.2018. As per office report, the respondents have been duly served. However, despite passover, neither anyone appears for the respondents nor any reply to the petition has been filed. The respondents are, therefore, proceeded ex-parte and the petition is taken up for disposal.

3. Learned counsel for the petitioner submits that the respondent no.2, being aggrieved by the termination of his services, raised an industrial dispute being ID No.9/15 which was pending for adjudication before the learned Labour Court for the last about three years and on 11.05.2018, the petitioner was granted the first opportunity to cross-examine the workman. She draws my attention to the impugned order dated 11.05.2018 and states that while the petitioner's counsel was in the middle of cross-examination, the learned Labour Court came to a conclusion that the counsel was wasting time of the Court by waiting for 2 to 5 minutes in asking each question. She further submits that based on its observations that the time of the Court was being wasted, the learned Labour Court had closed the right of the petitioner to further cross-examine the workman. She submits that, in these circumstances, the petitioner moved an application on 23.07.2018 seeking recall of the workman witness for further cross-examination as it was the stand of the petitioner that it was essential to confront the workman with various vital documents in order to bring out the nature of work being carried out by him. Even this application has been rejected vide order dated 05.12.2018, which order is also impugned in the present petition.

4. Learned counsel for the petitioner submits that the impugned order closing the petitioner/Management's right to cross-examine the workman by observing that the management was wasting time of the Court by not asking questions to the witness and by taking more than 2 to 5 minutes for each question was wholly without any basis. She further submits that the learned Labour Court failed to consider the

fact that the date on which the impugned order was passed, was in fact the first date when the workman had appeared before the Court for tendering his evidence by way of affidavit, whereafter the petitioner's authorised representative had proceeded to cross-examine the witness. She submits that as per her instructions, the cross-examination was carried out only for 30/35 minutes and, thus, contends that there was no justifiable reason for the learned Labour Court to close the right of the petitioner to carry out further cross-examination.

5. I have considered the submissions of learned counsel for the petitioner and with her assistance perused the record. A perusal of the impugned order in itself shows that a number of questions were put to the workman/respondent no.2 during cross-examination and, therefore, there is merit in the petitioner's plea that the observation in the impugned order to the effect that the time of the Court was being wasted, was wholly unwarranted. Even if the Court was of the view that the authorised representative of the petitioner was a little slow in asking questions, the same, in my opinion, could not be a reason for the Court to hold that its time was being wasted and, therefore, the right of the petitioner to further cross-examine the witness should be closed. The learned Labour Court ought to have kept in mind that, at times, during cross-examination, the trend of the cross-examination would depend on the nature of the answers being given by the witness and, in these circumstances, merely because the authorised representative of the management was taking 2 to 5 minutes per question, it would not be just and proper to hold that he was wasting

the time of the Court.

6. In my opinion even though an expeditious adjudication of industrial disputes is the pressing need of the hour, keeping in view the large pendency of labour disputes before the Courts, the process cannot be hastened so much so as to deprive a litigant of an adequate opportunity to cross-examine a witness. It needs no reiteration that the right of cross-examination is a vital not only for a workman but also for the management to defend itself against the evidence tendered by the workman. The Court in its anxiety to expeditiously decide an industrial dispute, ought not to prejudice any of the parties by closing this vital right of cross-examination in an undue haste by forgetting that this right is one of the most important tools for arriving at the truth. Though, there is no doubt that the Court has the discretion to decide as to when to close the right of a litigant to cross-examine any witness, the discretion ought to be exercised in a manner that does not nullify the principles of natural justice and deprive any party of the opportunity to demonstrate the falsity of the claim against him.

7. I am of the considered opinion that in the facts of the present case, the impugned order closing the petitioner's right to cross-examine the workman was completely unjustified. As a result, the impugned order dated 11.05.2018 is unsustainable and is quashed. Consequently, the order dated 05.10.2018 rejecting the petitioner's application seeking recall of the witness for cross-examination is also quashed.

8. The learned Labour Court is directed to recall the workman/respondent no.2 for further cross-examination and grant at

least one more opportunity to the petitioner to cross-examine him. As it has been stated at the bar that the matter is now listed before the Labour Court on 01.03.2019 for tendering the evidence of the petitioner/Management, the learned Labour Court is directed to re-fix the time and date for the same, after completion of the cross-examination of the workman.

9. The petition is allowed in the aforesaid terms along with the pending application in the aforesaid terms.

(REKHA PALLI)
JUDGE

JANUARY 30, 2019
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