

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 5534 of 2019
and
W.M.P. No. 6298 of 2019

M/s. Aparajitha Rubbers (P) Ltd.,
Rep. By its Managing Director Mr. S. Gangwal,
No. 46, Industrial Estate (SIDCO),
Ambattur,
Chennai - 600 098. Petitioner

-vs-

A. Elumalai Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records and quash the Award dated 30.01.2017 passed in I.D. No. 217 of 2016 by the Presiding Officer, II Additional Labour Court, Chennai.

For Petitioner : Ms. Veda for Mr. Meenakshi Sundaram

For Respondent : Mr. S. Senthamilselvan

ORDER

(through video conference)

Heard Ms. Veda, Learned Counsel appearing for the Petitioner and Mr. S. Senthamilselvan, Learned Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. An exparte award dated 30.01.2017 in I.D. No. 217 of 2016 was passed by the II Additional Labour Court, Chennai (hereinafter referred to as the 'Labour Court' for short) against the Petitioner in a petition under Section 2-A(2) of the Industrial Disputes Act, 1947, filed by the Respondent. The Petitioner filed applications in I.A. No. 255 of 2017 and I.A. No. 66 of 2017 to set aside the aforesaid exparte award and condone delay in filing the same respectively. The Labour Court condoned the delay in filing I.A. No. 255 of 2017 on payment of

costs of Rs.500/- by the Petitioner to the Respondent. However, the Petitioner had not complied with the condition to pay costs of Rs.2,000/- that had been imposed by the Labour Court in I.A. No. 255 of 2017 for setting aside the exparte award. The application in I.A. S.R. 5054 of 2018 filed by the Petitioner to restore I.A. No. 255 of 2017 and condone the day in filing the same was rejected by the Labour Court by order dated 24.08.2018 stating that the order dismissing I.A. No. 255 of 2017 for failure to pay costs sought to be set aside was not made exparte and that Petition to condone delay in filing the same cannot be entertained. In that backdrop, the Petitioner has challenged the exparte award dated 30.01.2017 in I.D. No. 217 of 2016 passed by the Labour Court in this Writ Petition.

3. The Hon'ble Supreme Court of India in Haryana Suraj Malting Ltd. -vs- Phool Chand [(2018) 16 SCC 567] has explained the legal position relating to the enforceability and binding nature of an exparte award passed under the Industrial Disputes Act, 1947, in the following words:-

"35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays Bank Ltd., -vs- Central Govt. Industrial Tribunal, (AIR 1981 SC 606), an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

....

37. 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."

As already noticed, the Labour Court in this case has been satisfied that there has been sufficient cause that had prevented the Petitioner from appearing for the hearing of I.D. No. 217 of 2016, which had resulted in the exparte award, but that application in I.A. No. 255 of 2017 had been dismissed due to non-payment of costs of Rs.2,000/- within the fixed time. In this regard, it must be pointed out that the Division Bench of this Court in *Gowri Ammal -vs- Murugan* [(2006) 3 CTC 418] following the dictum laid down by the Hon'ble Supreme Court of India in *Mahanth Ram Das -vs- Ganga Das* (AIR 1961 SC 882) has held that a Court cannot be made helpless or powerless when the costs are not paid within the time fixed as a condition for setting aside an exparte order and that it has the power to extend time beyond the stipulated time when sufficient cause exists. Viewed from that perspective, the refusal of the Labour Court to entertain I.A. S.R. 5054 of 2018 cannot be sustained.

4. The Petitioner in this case in the affidavit filed in support of I.A. S.R. 5054 of 2018 has explained that the costs could not be paid within the time fixed due to bereavement in the family of the affiant representing the Petitioner, and Learned Counsel for the Respondent fairly states that he does not dispute its truth and that it could be accepted. Consequently, in order to shorten litigation and expedite the disposal of I.D. No. 217 of 2016 without brooking any further delay, Learned Counsel for the Respondent has agreed that the impugned exparte award dated 30.01.2017 in I.D. No. 217 of 2016 may be set aside and the matter remitted for fresh adjudication. The sum of Rs.10,000/- fixed by this Court as costs for the same has been paid by Learned Counsel for the Petitioner to Learned Counsel for the Respondent under written acknowledgment, which has been placed on record.

5. In view of the foregoing discussion, the impugned exparte award dated 30.01.2017 in I.D. No. 217 of 2016 passed by the II Additional Labour Court, Chennai is set aside and I.D. No. 217 of 2016 is restored to file, and the matter shall be posted for the next hearing on 02.09.2020 before the Labour Court. The Petitioner shall file its Counter in I.D. No. 217 of 2016 on that date without fail. The parties through their Counsel shall appear on the subsequent dates of hearings that are fixed by the Labour Court, which shall endeavour to expeditiously dispose that case following the prescribed procedure on merits in

accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court preferably by 31.12.2020.

6. In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vjt

To

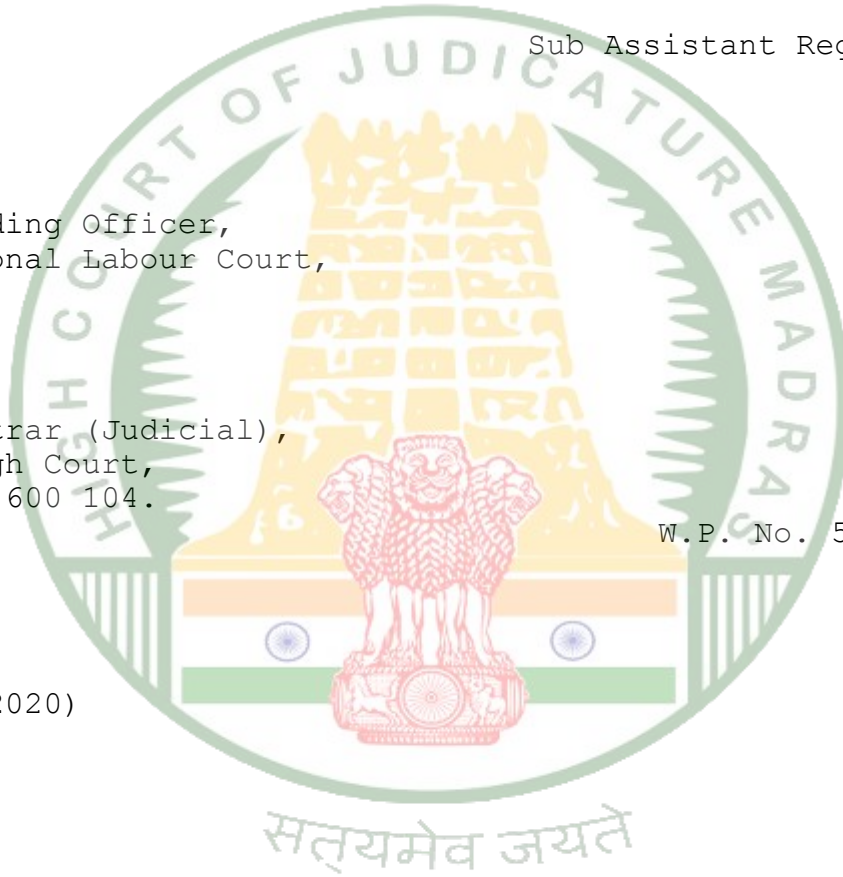
The Presiding Officer,
II Additional Labour Court,
Chennai.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

W.P. No. 5534 of 2019

SSI (CO)
GN (30/07/2020)



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