

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-1480-2013 (O&M)
Date of decision: 08.01.2020

M/s Three Bond India Private Limited

....Petitioner

versus

Presiding Officer, Industrial Tribunal cum Labour Court-I, Gurgaon
and another

...Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. U.K. Agnihotri, Advocate
for the petitioner.

Ms. Kamaldeep Kaur, Advocate for
Mr. Sandeep Singh Jattan, Advocate
for respondent No.2.

GIRISH AGNIHOTRI, J. (Oral)

The present petition has been filed by the petitioner-M/s Three Bond India Private Limited *inter alia* praying for quashing of the order dated 30.07.2012 (Annexure P-5), whereby, the application for setting aside the *ex parte* proceedings, had been rejected.

Counsel for the petitioner has placed reliance upon a judgment of Hon'ble Supreme court in “*M/s Haryana Suraj Malting Ltd. vs. Phool Chand, 2018(16) SCC 567*” to contend that the Hon'ble Apex Court has observed that merely because the award has become enforceable, does not necessarily mean that it has become binding. He relies on Paras No.32 & 35 of the judgment, which are reproduced as under:-

32. *In case a party is in a position to show sufficient cause for its absence before the Labour Court/ Tribunal when it was (1996) 6 SCC 92 set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.*

35. *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.*

Notice of motion was issued on 24.01.2013.

Respondent No.2 has filed reply and it has been stated that the Labour Court had become *functus officio*. Further reliance was placed on a judgment passed by the Hon'ble Supreme Court of India in case “*M/s Sangham Tape Company Vs. Hans Raj (2005) 9 S.C.C. 331*”.

To rebut this, learned counsel for the petitioner submits that in fact, this very judgment has been considered in the reasoned judgment of the Hon'ble Supreme Court of India as mentioned above.

In view of the submissions made above, this Court is of the view that it will be appropriate to set aside the impugned order dated 30.07.2012 (Annexure P-5) and direct the authorities to appear before the Labour Court on 03.02.2020, so that the case can be decided on merits.

Accordingly, the present writ petition is disposed of.

(GIRISH AGNIHOTRI)
JUDGE

08.01.2020
anju rani

Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No