

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT

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1. CR No. 2671 of 2020
Date of decision : 18.12.2020

M/s Skylark Infra Engineering Private LimitedPetitioner

Vs.

Rajender Kumar JhaRespondent

2. CR No. 2672 of 2020

M/s Skylark Infra Engineering Private LimitedPetitioner

Vs.

Bijender Prasad DwivediRespondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Amit Kohar, Advocate, for the petitioner(s)

Rajbir Sehrawat, J. (Oral)

This order will dispose of above titled two petitions bearing CR No. 2671 of 2020 and 2672 of 2020; the common order being under challenge in both these petitions. For reference, the facts are taken from CR No. 2671 of 2020.

This petition has been filed under Article 227 of the Constitution of India seeking setting aside the order dated 29.9.2020 (Annexure P-1) passed by the Presiding Officer, LC-II, Gurugram, vide which application of the petitioner/employer for interim stay on execution of the award dated 5.8.2019, has been dismissed.

A bare perusal of the paper book shows that after filing written statement in the main case, the petitioner/employer had stopped appearing before the Labour Court. Accordingly, the petitioner/employer was proceeded ex-parte in those proceedings. Thereafter, the petitioner had preferred an application for setting aside the ex-parte proceedings; after more than one year of the said order. However, the present petitioner/employer again did not appear before the Labour Court. As a result, the ex-parte award was passed by the Labour Court. Now the application has been filed before the Labour Court by the petitioner/employer for setting aside the ex-parte award. In the said application notice has been issued by the Labour Court. However, the service has not been effected upon the workman/respondent so far. Last time the fresh notice was issued to the workman on 24.11.2020. However, even on the said date, the workman could not be served with the notice because he was reported to have left the given address. Accordingly, again a fresh notice is stated to have been issued by the Labour Court. However, in the mean time, the applicant/employer had filed application for staying the operation of the award passed by the Labour Court but that application has been declined by the Labour Court vide impugned order; on the ground that unless notice of the application was served upon the workman, no stay order can be passed at the back of the workman. This Court does not find any illegality or impropriety with the course of action adopted by the Labour Court. It is obvious that the award in favour of the workman was passed after granting due opportunity to the petitioner/employer, which he partly availed and partly squandered. Hence, with the passing of the ex-parte award, a vested right has been accrued to the

workman/respondent. Therefore, the workman/respondent cannot be divested of the said right, even temporarily, without affording him an opportunity of hearing on any application moved for setting aside the ex parte award.

Learned counsel for the petitioner has submitted that the authorised representative of the workman is appearing in execution proceedings, therefore, the respondent/workman could have been served with notice through the authorised representative. However, this Court does not find any force even in this argument of the counsel for the petitioner. It is obvious that the proceedings of the award and the proceedings of execution are two different proceedings instituted differently and for different purposes. The original proceedings had come to an end with passing of the award. Therefore, it is not necessary that a person authorised to appear in one proceedings may be authorized to appear in other proceedings as well. Hence, the Labour Court has not committed any illegality in not accepting this demand of the petitioner/employer. Needless to say that there are prescribed ways and means for effecting service upon a party, even if the said party is deliberately avoiding the appearance before a judicial forum. The petitioner/ employer would have been at liberty to avail those remedies, if he is otherwise entitled to avail those steps at this stage. Hence, even this argument of the counsel for the petitioner is liable to be noted only to be rejected.

Needless to say that even now the Labour Court has not excluded the petitioner from consideration of his case altogether. The case is still at the stage of effecting service upon the workman. The petitioner can obtain any order from the Labour Court adverse to the workman only after effecting

service upon him, and if so considered appropriate by the Labour Court.

In view of the above, finding no merit in the present petitions, the same are dismissed.

A photocopy of this order be placed on the file of the connected case.

**(RAJBIR SEHRAWAT)
JUDGE**

18.12.2020
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No