

\$~19, 20, 23, 24 & 27

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

Date of decision: 23rd December, 2020

+ **W.P.(C) 10969/2020 & CM APPLs. 34325/2020, 34326/2020**

M/S KUMAR FOOD INDUSTRIES LTD Petitioner

Through: Ms. Nandita Abrol, Advocate (M:
9899970368)

versus

SDM ALIPUR DELHI THROUGH: GOVT OF NCT
AND ORS.

..... Respondents

Through: Mr. Archit Krishna, Advocate for Mr.
Jawahar Raja, ASC (C), GNCTD for R-
1 & 2.

Mr. Bhupal Singh Rawat, AR for R-3.

20 WITH

+ **W.P.(C) 10972/2020 & CM APPLs. 34330/2020, 34331/2020**

M/S KUMAR FOOD INDUSTRIES LTD Petitioner

Through: Ms. Nandita Abrol, Advocate.

versus

SDM ALIPUR DELHI THROUGH: GOVT OF NCT AND
ORS.

..... Respondents

Through: Mr. Archit Krishna, Advocate for Mr.
Jawahar Raja, ASC (C), GNCTD for R-
1 & 2.

Mr. Bhupal Singh Rawat, AR for R-3.

23 WITH

+ **W.P.(C) 10997/2020 & CM APPLs. 34376/2020, 34377/2020**

M/S KUMAR FOOD INDUSTRIES LTD Petitioner

Through: Ms. Nandita Abrol, Advocate.

versus

SDM ALIPUR DELHI THROUGH: GOVT OF NCT AND ORS. RAM
UDGAAR

..... Respondent

Through: Mr. Archit Krishna, Advocate for Mr.
Jawahar Raja, ASC (C), GNCTD for R-
1 & 2.

Mr. Bhupal Singh Rawat, AR for R-3.

24 WITH

+ **W.P.(C) 11002/2020 & CM APPLs. 34384/2020, 34385/2020**

M/S KUMAR FOOD INDUSTRIES LTD Petitioner

Through: Ms. Nandita Abrol, Advocate.

versus
SDM ALIPUR DELHI THROUGH: GOVT OF NCT
AND ORS.

..... Respondents

Through: Mr. Archit Krishna, Advocate for Mr.
Jawahar Raja, ASC (C), GNCTD for R-
1 & 2.
Mr. Bhupal Singh Rawat, AR for R-3.

27

AND

+

W.P.(C) 11037/2020 & CM APPLs. 34480/2020, 34481/2020
M/S KUMAR FOOD INDUSTRIES LTD

..... Petitioner

Through: Ms. Nandita Abrol, Advocate.

versus

SDM ALIPUR DELHI THROUGH: GOVT OF NCT
AND ORS.

..... Respondents

Through: Mr. Archit Krishna, Advocate for Mr.
Jawahar Raja, ASC (C), GNCTD for R-
1 & 2.
Mr. Bhupal Singh Rawat, AR for R-3.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. This is the second round of writ petitions filed by the Petitioners herein. The present petitions have been filed challenging the execution of *ex-parte* awards dated 16th October, 2019 passed by the Id. Presiding Officer, Labour Court (*hereinafter* 'POLC'), till the decision in the Order IX Rule 13 CPC applications filed by the Petitioners, is taken. The order dated 9th December, 2020, issued by the SDM's office, by which the bank account of the Petitioner has been attached, has also been challenged.
3. In the first round of writ petitions, which were decided on 14th August, 2020, the grievance of the Petitioner was that by the impugned order therein, the Labour Court had dismissed the consolidated application filed by the

Petitioners for obtaining copies of the entire proceedings, in which the *ex-parte* awards came to be passed against them. This Court had taken cognizance of the said petitions and had passed the following order:

“2. The present petitions have been preferred challenging the impugned order dated 4th August, 2020 passed by the Presiding Officer, Labour Court. The brief background is that the Respondent/Workmen had instituted industrial disputes against the Petitioner/Management and ex parte awards were passed on 16th October, 2019. The case of the Petitioner is that it was informed of the awards which were passed only when the letters dated 10th July 2020 in respect of the non-implementation of the awards were received from the Deputy Labour Commissioner/ Implementation Officer of the GNCTD.

3. Ms. Nandita Abrol, ld. Counsel appearing for the Petitioner submits that upon being served with the said letters dated 10th July, 2020, the Petitioner approached the Labour Court by means of a consolidated Application on 23rd July, 2020 for obtaining the copies of the entire proceedings before the Labour Court. In the said Application on 4th August, 2020, the Labour Court passed an order rejecting the same. It also did not direct providing of the record of the cases and has observed that the Petitioner failed to appear in the proceedings despite being served, hence leading to the ex parte award against the Management.

4. The grievance of the Petitioner is that since the Petitioner does not have any records of the proceedings before the Labour Court, the rejection of application to provide the records is not tenable as the Petitioner should be permitted to avail of its remedies in accordance with law.

5. A perusal of the application filed by the Petitioner shows that the limited prayer in the said

application was for permission to obtain the complete files of LIR Nos. 3145/17, 3146/17, 3147/17, 3148/17 and 3149/17. While deciding the said application, the Presiding Officer, Labour Court has observed that the Petitioner did not appear despite service and therefore waived his remedies.

6. The approach of the Labour Court is erroneous inasmuch as it cannot be presumed that the Petitioner's case that it did not have the records and files of the proceedings is incorrect. Though the management may have been proceeded ex parte, leading to the award dated 16th October, 2019, the management ought to be allowed to avail of its remedies to challenge the said order in accordance with law. Thus, the directions ought to have been given by the Presiding Officer for issuance of the copies of the records and the files. No party can be deprived of access to records. Inspection ought to be permitted and if the same is not possible the Petitioner ought to be permitted to obtain certified/uncertified copies to avail its remedies in accordance with law.

7. Accordingly, it is directed that the copies of the record of LIR Nos. 3145/17, 3146/17, 3147/17, 3148/17 and 3149/17 be provided to the Petitioner within a period of one week from today. Upon the same being provided, the Petitioner is permitted to avail of its remedies in accordance with law. In view of this order, the Implementation Officer shall adjourn the matter, stated to be listed before him on 20th August, 2020, by one month in order to enable the Petitioner to avail its remedies. Upon the expiry of one month, the Implementation Officer is free to proceed in accordance with law. It is made clear that this Court has not made any observations on the merits of the dispute as also the question as to whether the Petitioner was rightly served or rightly

proceeded with ex parte or not. All contentions of parties are left upon.”

4. Post the passing of the order on 14th August, 2020, the Petitioners moved applications under Order IX Rule 13 CPC and stay of award, before the POLC. However, till date, for one reason or the other, the same have not been decided.

5. A perusal of the orders passed by the Id. POLC shows that initially, the POLC who had dealt with these matters i.e. Sh. Ramesh Kumar – II was on leave due to illness and the matters were shifted to the POLC – Sh. Pawan Kumar Matto. However, before the said Id. POLC could finally hear the applications, the Respondent-Workmen moved applications before the Id. District Judge for transfer of the matters as the original POLC i.e. Sh. Ramesh Kumar-II had resumed office and the Workmen submitted that the matters should be listed before the POLC who had passed the *ex-parte* awards in the first place. According to the Petitioners, the said transfer petitions have been taken up on 18th November, 2020 and again on 22nd December, 2020. Id. Counsel for the Petitioner submits that the Id. District Judge has now relegated the matters to the appropriate Government for marking the matter to the appropriate POLC.

6. In the first call, when these matters were listed before this Court, Id. counsel for the Petitioners was requested to contact the Id. counsel for the Respondents, who was served with advance copy of these writs, to request him to appear in the proceedings.

7. Thereafter, Mr. Bhupal Singh Rawat, Authorised Representative of the Respondent has entered appearance in the matter and submits that the matters were taken up before the Id. POLC – Sh. Pawan Kumar Matto today, who has

passed an order of stay. However, the exact content of the said order is not yet available to the counsel.

8. Considering the overall facts and circumstances and the fact that since 14th August, 2020, no effective proceedings have in fact taken place and the matters are only being moved from one POLC to the District Judge, and then back to another POLC, without any effective adjudication, this Court is of the view that the matter should now be taken up expeditiously on merits. Accordingly, the following directions are issued:

- i) The matters shall now be taken up before the Id. POLC – Sh. Ramesh Kumar – II who will adjudicate on the applications under Order IX Rule 13 CPC and the stay application, within a period of three months from today;
- ii) The attachment order of the Petitioner's bank account dated 9th December, 2020, issued by the SDM shall remain stayed. No proceedings for recovery shall be initiated till the decision in the Order IX Rule 13 applications are adjudicated;
- iii) Parties shall however ensure that no adjournments are sought before the Id. POLC and the matters are heard expeditiously.

9. Litigation expenses of Rs.10, 000/- for each of the Workmen shall be paid by the Petitioner, within a period of two weeks.

10. The present petitions, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

DECEMBER 23, 2020

Rahul/A