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

% *Decided on: 13.02.2020*

+ **W.P.(C) 799/2020 & CM APPL. 2442/2020**

M/S RAJDHANI PROPERTIES Petitioner
Through: **Ms. Shalini Jolly, Adv.**

versus

SHRI VIJAY KUMAR Respondent
Through: **Mr. Deepak Sinha, Adv.**

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition impugns the order dated 31.05.2017 passed by the learned Labour Commissioner, wherein the petitioner was proceeded ex-parte. The learned Labour Commissioner has recorded as under:

“6. Claimant has filed written arguments on record. Since after filing reply respondent did not appeared for leading any evidence to prove contends of his reply on merit as such without any testimony reply filed by respondent is not considerable. In view of this, I have left no option except to consider claim of claimant. Accordingly, it is prove by claimant on the basis of documents placed on record that M/s Rajdhani Properties exists at the given address in claim and employee employers relationship exists and accordingly claimant is entitled his earned wages for the period from 1.7.2012 to 30.12.2012 @ Rs.12000/- p.m. which comes Rs.72,000/- but respondent had already paid Rs.22,000/ out of Rs.72000/- to the

claimant as such respondent management is liable to pay Rs.50000/- by way of demand draft in the name of claimant alongwith Rs. 15,000/- compensation to claimant Sh. Vijay Kumar.

7. In view of above discussion and under the Act, this Authority is empowered to hear and decide all claims out of delayed payment or non payment of earned wages of an employee employed in an establishment as per section 21(3) of the Act. Accordingly, I direct respondent M/s Rajdhani Properties to pay Rs.50,000/- to the claimant Sh. Vijay Kumar S/o Sh. Ayodhya Prasad alongwith Rs. 15,000/- compensation to claimant by way of Demand Draft within 30 days from the receipt of this order failing which the same shall be recovered as per law. Accordingly, all the issues are decided in the favour of claimant, and against the respondent/management.”

2. The learned counsel for the petitioner submits that he could not appear before the learned Labour Commissioner because he fell ill. There is nothing on record to show that he was so debilitated/incapacitated and that he could not attend to the aforesaid case after he had filed the reply to the claim. Furthermore, the petitioner is stated to be in the business of real estate. It is not shown that he was carrying out any business thereafter or there was no earnings, etc. from the said business.

3. The learned counsel for the petitioner further submits that the claimant was an employee of M/s. Dinesh Builder Pvt. Ltd. and he had been paid Rs. 20,000/- as full and final payment. Therefore, there was no claim

against the petitioner. This issue has been dealt with by the order of the learned Labour Commissioner on 26.07.2019, which read as under:-

“No.SE/238/WD/15/

Sh. Vijay Kumar Vs. M/s Rajdhani Properties.

Respondent Management filled (sic) application on 08.06.2017 before this authority to recall order dated 01.06.2017 of this authority. Respondent management has taken similar ground which he had taken in reply/letter dated 27.04.2016 which facts was considered in order dated 01.06.2017 by the authority. No new facts has been mention (sic) in application by the respondent for recalling the order dated 01.06.2017. Claimant vide his reply dated 24.08.2017 filled in response to application of respondent wherein claimant has denied all the contents of application. During the proceeding respondent management filled letter dated 30.05.2016 of M/s Dinesh Builder Pvt. Ltd. wherein it is certify that Sh. Vijay Kumar claimant has worked as a plumber on the site house no 40, Veena Enclave Delhi – 110018 on contract basis during the period from 15.08.2012 to 28.10.2012 of Dinesh Builder Pvt. Ltd. who paid amount of Rs. 20,000/- as full and final payment. On the request of respondent management summon dated 23.03.2018 by speed post was sent to Dinesh Builder Pvt. Ltd. to appear before this authority to certify contents of letter dated 30.05.2016 which pertain to Dinesh Builder Pvt. Ltd. Plot No. 40, Meera Enclave, Chaukhandi, New Delhi- 110018 but on given date and time that is on 23.08.2018 at 10.00 A.M. no one appeared for Dinesh Builder as such summon dated 11.07.2018 was against (sic) sent to M/s Dinesh Builder Pvt. Ltd through SHO Tilak Nagar, Delhi and same was served upon respondent as per report of SHO Tilak Nagar dated 05.08.2018 but respondent management again did not appear to certify the contents of letter dated 30.05.2016. In view of this respondent management failed to prove contents of letter dated 30.05.2016 is not considerable.”

Further it is pertinent to mention in this order that the defense/ reply letter dated 27.04.2016 filled by management was considered before passing order dated 01.06.2017. In present application dated filled (sic) on 08.06.2017 by respondent is not maintainable as respondent could not prove his case. Accordingly application filled (sic) on 08.06.2017 of respondent management is dismissed. Copy of order be given to the parties."

4. What emanates from the above is that there is nothing on record to show that the respondent-workman was employed with M/s. Dinesh Builder Pvt. Ltd. The claim of the respondent-workman is that the petitioner did not pay him his earned wages for the period 01.07.2012 to 30.12.2012. During the proceedings before the learned Labour Commissioner, the management had filed a letter of M/s. Dinesh Builder Pvt. Ltd. showing that the workman had worked as plumber on site from 15.08.2012 to 28.10.2012, and he was paid an amount of Rs. 20,000/- as full and final payment towards all his claims. The latter payment was never proven. The workman had claimed that he was working with M/s. Rajdhani Properties and he produced a photo copy of his demand notice sent out initially. His claim was uncontested.

5. There is no cause for setting aside the impugned order. The petition is without merit. It is accordingly dismissed.

6. The amounts deposited by the petitioner be released to the respondent along with interest accrued thereon.

NAJMI WAZIRI, J

FEBRUARY 13, 2020

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