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

Date of decision: 5th November, 2020

\+ **W.P.(C) 4441/2002**

ZAHOOR AHMAD ..... Petitioner

Through: Ms. Anju Lal & Ms. Shalu Lal, Advocates (M-9810430756)

versus

DEPUTY LABOUR COMMISSIONER & ORS ..... Respondents

Through: Ms. Urvi Mohan, Advocate for Mr. Sanjoy Ghose, ASC, GNCTD (M-7718992441).
Mr. Gulshan Chawla, Amicus Curiae (M-9899737099).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court.

2. The present petition has been filed by one Mr. Zahoor Ahmad, who claims to be the sole proprietor of M/s. Hans Cinema, challenging the recovery certificate dated 13th June, 2002 by which recovery is sought to be made to the tune of Rs.1,28,874/- towards the amount due to the Workman – Mr. Madan Lal (since deceased) *(hereinafter, "Workman")*.

3. M/s Vijay Cinema was operating from Khasra No.355, Min. Village Malikpur Chhawni, G.T. Karnal Road, Azadpur, Delhi. The property belongs to the Petitioner/other co-owners and was taken on rent by M/s Vijay Cinema since 1975 by two partners. There was a reconstitution of the partnership in 1992. It became a partnership firm of Sapru's and Kapoor's Mr. Sudarshan Kapoor, Mr. Vijay Kapoor, Mr. Manish Kapoor, Mr. R.S. Sapru and Mr.Dalip Sapru. The Workman – Mr. Madan Lal was working in the cycle stand of M/s.

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Vijay Cinema since 1978 on a monthly salary of Rs.350/-. He originally filed a claim in 1991 against M/s Vijay Cinema. In the said claim, which was decided by the Presiding Officer, Labour Court I, Award dated 30th August, 1996 was passed. The operative portion of the said Award is set out below:

> *"10. The claimant has deposed that he remained unemployed since the day of his termination.* ***It being so, the workman is entitled to reinstatement with full back wages.*** *Accordingly, I hold the workman entitled to reinstatement with full back wages and continuity of services. The reference is answered accordingly."*

4. Pursuant to this award, back wages of Rs.43,000/- were admittedly paid by M/s Vijay Cinema to the Workman, however, he was not reinstated.

5. In the meantime, the Petitioner sought eviction of M/s Vijay Cinema by filing a suit for possession. The said suit came to be decreed on 27th September, 1996. In view of default by M/s Vijay Cinema in complying with the compromise decree, an execution petition was filed in 1998. The Petitioner got possession of the property on 21st December, 1998. Since the property was in a dilapidated condition, the Petitioner carried out repairs and renovation. The license for the cinema hall had also expired and so the Petitioner got a fresh license under Section 10 of the Cinematographic Act, 1952. The Petitioner then started running a cinema hall on the property under the name of M/s Hans Cinema.

6. Once the Petitioner had commenced running M/s Hans Cinema, the Workman pressed the claim for reinstatement against M/s. Hans Cinema. He had arrayed both M/s Vijay Cinema and M/s Hans Cinema as the Defendants. In the written statement filed by the Petitioner, dismissal of the claim was sought on the ground that M/s Hans Cinema is not in any manner connected to

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M/s Vijay Cinema and it did not take over the liabilities of the management of M/s Vijay Cinema. This claim was dismissed by the Labour Court.

7. In 2001, a fresh claim under Section 33-C (2) of the Industrial Disputes Act, 1947 *(hereinafter, "ID Act")* was filed seeking enforcement/execution of the award dated 30th August, 1996 against M/s Hans Cinema. In this claim, the Workman sought outstanding wages along with interest. In the written statement to the claim under Section 33-C (2), the Petitioner denied that it had any liability towards the Workman and reiterated its position that it had not taken over the liabilities of M/s Vijay Cinema. Vide judgment dated 4th June, 2002, the said claim under Section 33-C (2) was dismissed by the Presiding Officer, Labour Court-III.

8. However, the Petitioner thereafter, received a recovery notice for a sum of Rs. 1,28,874/-. The same is reproduced as under:

> *"As per Order No. I.D. No. 543/91 dated 30.8.96 passed by the Labour Court, an amount of Rs.1,28,874/- (Rupees One lac twenty eight thousand eight hundred seventy four only) of the workman Shri Madan Lal is outstanding against the management of M/s Hans Cinema, G.T. Karnal Road, Azadpur, Delhi-33.*
>
> *The above mentioned amount is recoverable under Section 33(C)(1) of Industrial Disputes Act, 1947 like Land Revenue. As there is no separate account to deposit this amount, therefore this amount may be paid to Sh. Madan Lal."*

9. It is this recovery certificate which is under challenge in the present petition.

10. The submission of Ms. Lal, ld. Counsel for the Petitioner is that when the substantive execution against M/s. Hans Cinema is rejected, the impugned

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order certificate is not sustainable. She submits that the management of M/s. Vijay Cinema, who were at best the employers of the Workman, had no connection with the Petitioner. Though the Petitioner started a cinema hall in the same premises, it was a completely new establishment. In fact, a new EPF number was also allotted to the Petitioner.

11. On the other hand, Mr. Chawla, ld. Amicus Curiae appearing for the Workman submits that as per the documents which he has obtained from the DDA's website, the Petitioner claims that M/s. Hans Cinema was formerly known as M/s. Vijay Cinema and he also clearly claims in the said documents that M/s. Vijay Cinema is now known as M/s. Hans Cinema. Ld. Amicus Curiae also relies upon a media report wherein the Petitioner has given an interview stating that his cinema hall was approved in 1987. As per him, these two documents show that M/s. Vijay Cinema and M/s. Hans Cinema belong to the Petitioner.

12. After hearing ld. Counsel for the parties, the question that arises is as to whether the Workman had an employer-employee relationship with the Petitioner. The facts, insofar as they relate to the suit for possession filed by the Petitioner against the erstwhile management of M/s. Vijay Cinema, the compromise decree arrived therein and the final execution of the warrants of possession, are not in dispute. Clearly, the Petitioner had to resort to legal proceedings to evict the erstwhile management of M/s. Vijay Cinema and to seek possession of the property. When that is the situation and, admittedly, the Workman was employed by M/s. Vijay Cinema, which was run by the partnership firm of the Saprus and Kapoors, the said M/s. Vijay Cinema can clearly not be said to have been run by the Petitioner.

13. The Petitioner may have sought renewal of the license or issuance of

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the new cinema license in the same premises, however that would by itself not establish an employer -employee relationship between the Petitioner and the Workman. The Petitioner herein is the sole proprietor of M/s. Hans Cinema which is a completely different entity. The name of the entity is also different. This cinema is a sole proprietary concern whereas M/s. Vijay Cinema was a partnership concern. Mere press clippings or a loosely worded application to the DDA cannot be made to fasten liability upon the Petitioner in respect of employees who were not employed by the Petitioner. Clearly, the original award dated 30th August, 1996, which was passed against both M/s. Hans Cinema and M/s. Vijay Cinema, is enforceable only against M/s. Vijay Cinema and not against M/s. Hans Cinema, as is clear from the judgment dated 4th June, 2002.

14. In the judgment dated 4th June, 2002, the clear finding is as under:

> *"12. Turning to the case in hand, I find that management has totally denied the relationship of employer and employee between the parties. The workman has also admitted that he was working with M/s Vinay Cinema. I also perused copy of award No.543/91. It was also passed against M/s Vijay Cinema. Management has also filed copy of LCA No.19/00.* ***A perusal thereof has shown that workman has already filed similar application against Sh R.S. Sapru and Sh S.K. Kapoor, partners of Vijay Cinema****. In the proceedings U/S 33C(2) of the Act, this court has no jurisdiction to first decide whether there existed relationship of employer and employee between the parties and then proceed to compute the amount claimed by the workman. The principles of law discussed hereinabove are fully applicable to the facts of the present case and in view thereof I am of the view that application of workman U/S 33C(2) of the*

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workman is not maintainable. Therefore, this issue is decided in favour of management and against the workman."

15. This order has not been challenged and has attained finality. A perusal of the above extract of the said order shows that the question as to whether an employer-employee relationship existed at all, has been decided in favour of M/s Hans Cinema i.e., the Petitioner. The enforcement of award dated 30th August, 1996 against M/s Hans Cinema has already been rejected by the Labour Court. The judgment dated 4th June, 2002 has not been challenged and has been accepted by the Workman. Thus, an indirect recovery proceeding for executing the very same award dated 30th August, 1996 would be completely impermissible. Moreover, reliance by the ld. Amicus Curiae on the documents filed by the Petitioner with the DDA, which he has obtained from the website of the DDA, wherein the Petitioner may have used the expression *'formerly known as M/s Vijay Cinema'* cannot be read to mean that the Petitioner has taken over the liability of M/s Vijay Cinema.

16. Clearly, the Petitioner had to resort to legal proceedings to obtain possession of the property. Since, a cinema hall was already running in the said location, he may have decided to start a cinema hall on his own, however, that cannot imply that the Petitioner would have to bear the responsibility of the workmen employed by the hitherto M/s Vijay Cinema. There exists no privity whatsoever between the Petitioner and the Workman. The employer-employee relationship cannot be stretched to the extent as is being attempted in the present case where the Workman has never received any salary from the Petitioner. He was clearly an employee of M/s Vijay Cinema. The EPF authority's order relied upon by the ld. counsel for the Petitioner also

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makes it clear that M/s Hans Cinema is now registered afresh with the EPF authority. Thus, the recovery proceedings are not tenable against the Petitioner for enforcement of the award dated 30th August, 1996.

17. It is, therefore, clear that the original award dated 30th August, 1996 was not enforceable against the Petitioner, who is the sole proprietor of M/s. Hans Cinema as there is no employer-employee relationship between M/s Hans Cinema and the Workman. In any event, the Workman has also passed away during the pendency of these proceedings. The present petition was filed in 2002 and has remained pending for whatsoever reasons for the last 18 years. The total recovery, which was directed in the present case was a sum of Rs.1,28,874/-. The said recovery proceedings, which seek to recover the amount in order to implement the award dated 30th August, 1996 are, accordingly, not tenable against the Petitioner.

18. At the initial stage, Rs.5,000/- was directed to be paid as litigation expenses to the Workman vide order dated 26th July, 2002. However, there is no clarity as to whether the said amount was paid or not. Considering the fact that the matter has remained pending for many years, a sum of Rs.20,000/- is directed to be paid to the widow of the Workman as litigation costs, by the Petitioner by way of a demand draft within four weeks from today.

19. The petition is, accordingly, allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 5, 2020
Rahul/ C
(corrected and released on 9th November, 2020)

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