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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 15th September, 2020
+ **W.P.(C) 9271/2019, CM APPLs. 45075/2019, 52307/2019 &
3254/2020**

VIBA PRESS PVT LTD

..... Petitioner

Through: Mr. Krishna Chandra Dubey,
Advocate. (M:9810445502)

versus

RAVINDER YADAV

..... Respondent

Through: Mr. Sanjay Kumar, Advocate.
(M:8851145382)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been held through video conferencing.
2. The present petition challenges the impugned Award dated 22nd September, 2018 and the consequential orders of 12th November, 2018 and 19th November, 2018, passed by the Id. ADJ, Presiding Officer (Labour Court-V), Dwarka Courts. The case of the Petitioner is that the Respondent/Workman had initially raised an industrial dispute in 2011, which was dismissed due to non-compliance with section 2A of the Industrial Disputes (*hereinafter*, "ID") Act, 1947. Thereafter, he had raised another industrial dispute, by filing a statement of claim dated 18th January 2016. The Management's Authorised Representative (*hereinafter*, "AR") filed its written statement on 29th August, 2017.
3. The matter was listed from time to time before the Labour Court. According to the Id. counsel for the Petitioner, unfortunately on 25th April

2018, the AR for the Petitioner had noted the next date of hearing as 27th September, 2018, instead of 7th September, 2018, and therefore he did not appear for tendering of his evidence. Since he could not appear, the examination-in-chief of the workman was tendered, the cross-examination was treated as nil and the defence was also struck off – all on one day. The case was then listed for arguments on 22nd September 2018 and the impugned award came to be passed on the same day by the Labour Court. As per the said Award, the Labour Court has held that the Respondent/Workman is entitled to the relief of reinstatement with full back wages.

4. The submission of Mr. K.C. Dubey, Id. counsel for the Petitioner is that the matter was not heard on merits at all and the only reason why all the issues have been decided against the Management is because no evidence was led on their behalf. Since the absence of the AR was only for one date during the proceedings, it is submitted that the Petitioner had moved an application under Order IX Rule 13 of the CPC. However vide order dated 12th November, 2018, the Petitioner was directed to deposit the entire amount with the Court within one week, prior to the issuance of notice in the application. On 19th November, 2018, since there was no deposit made by the Petitioner, the application was dismissed for non-prosecution.

5. Heard. A perusal of the orders passed by this Court shows that, initially there was no stay order, which was granted. Vide order dated 14th October 2019, this Court had directed that the awarded amount should be deposited within six weeks, subject to which the impugned award shall remained stayed.

6. The Petitioner had thereafter deposited a sum of Rs. 4,19,000/- with

the Registrar General of this Court. However, the workman submitted that the total awarded amount was more than Rs.12,00,000/-. Accordingly, the Petitioner was directed to place a calculation chart on record vide order dated 13th January, 2020. The said order reads as under:

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2. *As the writ petition is already listed for hearing on 05.03.2020, after some arguments, learned counsel for the applicant does not press the present application, but points out that the petitioner has still not deposited the amount in terms of this Court's order dated 14.10.2019 despite repeated opportunities given by this Court.*

3. *Learned counsel for the petitioner, who appears on advance notice prays for and is granted three days further time to deposit the awarded amount along with the calculation chart. It is made clear that, in case, the amount as directed is not deposited by the petitioner within the next three days, the interim order dated 14.10.2019 shall automatically stand vacated and it will be open for the respondent to seek for execution of the award.*

4. *The application stands disposed of.”*

7. The Respondent/Workman then moved an application, being CM APPL. 3254/2020 for release of the amount, on the ground that his daughter's marriage is to be fixed.

8. A perusal of the record in this case shows that there has been a default of non-appearance by the Petitioner on one date, and thereafter non-deposit, as per the order dated 12th November, 2018. Even before this Court, there is a dispute as to the awarded amount as per the Labour Court's order.

9. The claim of the workman initially is that the awarded amount is over

Rs. 12,00,000/- and at a later stage it was submitted that the awarded amount is in the range of Rs.16,00,000/-. However, a deposit of Rs.4,19,000/- has been made with this Court, by the Petitioner.

10. The impugned award having been made *ex parte* and the Management not having had an opportunity to put-forth its case, this court is of the opinion that one day's absence cannot put the management to such detriment. It deserves an adjudication on merits. Accordingly, the following directions are issued:

- i) From the amount deposited by the Petitioner with the Court, a sum of Rs.3,00,000/- shall be released to the Workman, within a period of two weeks by the Registry. The remaining amount shall be released back to the Management, along with the interest accrued thereupon (after deducting the TDS). The release of this amount is subject to the condition that if the labour court holds in favour of the Management, the amount would be liable to be refunded within four weeks from the date of passing of the order of the Labour Court.
- ii) The Presiding Officer (Labour Court) (*hereinafter* 'PO-LC') shall hear the matter afresh, after providing an opportunity to the Petitioner/Management to lead evidence. The evidence shall be led within a time period, which may be prescribed by the PO-LC.
- iii) After the evidence is led by the Management, and the matter is heard afresh, the petition shall be decided on merits by the PO-LC.
- iv) At the time of passing of the final order, if the dispute is

decided in favour of the workman, the PO-LC shall also specifically compute the amounts, if any, which may be held to be payable to the Workman, so that there is no dispute in the future with respect to the amount, as is being raised in the present petition.

v) If the Labour Court holds that no amount is payable, then the Workman would be liable to repay the amount to the tune of Rs.3,00,000/- to the Management, within a period of four weeks after passing of that order. However, on the other hand, if it is held by the Labour Court that the Workman is entitled to a larger amount, the amount of Rs.3,00,000/- already paid, shall be adjusted.

11. With these observations, the present petition and all pending applications are disposed of.

12. List before the Presiding Officer (Labour Court-V), Dwarka Courts on 16th October, 2020. Copy of the order be communicated to the Presiding Officer, Labour Court V, Dwarka, by the Registrar (Appellate) of this Court.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 15, 2020

dj/Ak