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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision:-15.01.2020.

+ W.P.(C) 5096/2007
B.K.GUPTA & ANR Petitioner
Through Mr.Anil Nag with Mr.Iftekhar
Ahmed, Advs.

versus

S.GURMUKH SINGH Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition filed by the Management assails the ex parte award dated 11.07.2002 passed by the learned Labour Court, Karkardooma Courts, Delhi in I.D.No.657/1995. Under the impugned award, the Labour Court has, by relying on the documents filed by the respondent, directed the petitioner to reinstate him with full backwages.
2. Upon notice being issued in the present petition, the respondent entered appearance through Mr. K.K. Jha, Advocate who also filed the counter affidavit on his behalf. The record, however, shows that after 04.04.2011 Mr. Jha had stopped appearing which led to the matter being repeatedly adjourned and on 19.11.2015, when none of the parties were present, the present petition was dismissed in default and for non-prosecution. Upon an application for restoration filed by the petitioner, notice was again issued to Mr. Jha, Advocate, who informed this Court on 17.11.2016 that the respondent had taken the brief back

from him prior to the dismissal of the writ petition. In these circumstances, this Court directed issuance of fresh notice to the respondent, who could not be served by ordinary process and was ultimately served by way of publication in the Hindustan Times (English) and Amar Ujala (Hindi) in August, 2017. Notwithstanding service by publication and repeated adjournments, the respondent has remained unrepresented, which is the case today as well despite grant of passover.

3. In these circumstances, the writ petition is taken up for final disposal.

4. The brief facts are that the petitioner is a company duly registered with the Registrar of Companies, Rajasthan, having its registered office at E-51/52, Ambaji Industrial Area, Jaipur, Rajasthan since 14.02.1986. The petitioner appointed the respondent as a Maintenance Charge Hand in the pay scale of Rs.1100-40-1500/- along with 20% H.R.A. vide letter of appointment dated 21.07.1990. Subsequently, the respondent entered into an agreement of employment with the petitioner on 05.01.1991, whereby he undertook to serve the petitioner in Jaipur for a period of five years on the terms and conditions set down in the agreement. It is the petitioner's case that when the respondent, after serving for a few months, proceeded on unauthorised leave w.e.f. 20.07.1991 and sought to rejoin duty in October, 1991 he was informed by the petitioner to await a final decision on the aspect of his unauthorised leave by the Competent Authority but he never returned to rejoin duty. On the other hand, the respondent, claiming to have been illegally terminated, raised an

industrial dispute by stating therein that the petitioner had a branch office in Delhi. In these circumstances, the respondent's industrial dispute came to be referred to the Labour Court at Delhi for adjudication on 22.04.1994.

5. Before the Labour Court the respondent/workman instead of mentioning the registered address of the petitioner at Rajasthan, which was also its address in the employment agreement, incorrectly wrote an address in Delhi as the petitioner's address in his claim petition. Consequently, notices kept being issued to the petitioner at the address in Delhi, as furnished by the respondent, but no notice was ever issued to its registered office address in Jaipur, Rajasthan. Since the petitioner did not have any office in Delhi, none of the notices issued by the Labour Court were ever served on the petitioner and, resultantly, remained unrepresented before the Labour Court. On 17.10.2000 the Labour Court proceeded ex parte against the petitioner on the premise that it had wilfully remained absent despite being served repeated notices. Thus, the Labour Court, by relying on the unrebutted evidence led by the respondent, allowed his claim by directing the petitioner to reinstate him with full backwages.

6. The petitioner Company has filed the present petition assailing this award. In support of the present petition, learned counsel for the petitioner submits that the petitioner was never served with any notice of the claim petition, which is reflected in the record of the Labour Court itself. By drawing my attention to the various reports of the process server, annexed to the present petition, he contends that as the petitioner did not have an office in Delhi and all attempts to serve the

petitioner at the address furnished in the claim petition proved futile, it was evident that this address in Delhi was incorrect; which fact the Labour Court failed to appreciate while wrongly proceeding ex parte against the petitioner. He, therefore, prays that the ex parte award be set aside.

7. Even though the respondent is unrepresented, I have perused the counter affidavit filed by the respondent and find that except for bald statement to the effect that the petitioner had an office in Delhi from where it controlled its business, neither has any material averment been made nor has any document been filed to prove that the petitioner had its office in Delhi or that the petitioner's address furnished in the claim petition was correct.

8. Having considered the submissions of learned counsel for the petitioner and perused the record, I find merit in the petitioner's contention that the Labour Court has hastened to pass the ex parte award without even examining whether service had been duly affected upon the petitioner.

9. It appears that the respondent, despite being aware that the petitioner's office was in Jaipur, Rajasthan, did not furnish this address in his claim petition. Pertinently, when successive attempts to serve notice failed, the Process Server furnished a report to the Labour Court on 25.02.2000 which reads as under:

"Today on 25.02.2000 when I went to the spot for enquiring about M/s. Baluka Drugs Ltd., then the premises was found lock. The neighbors were asked about the above firm then they told that this firm has left this place about one years back. No witness was available. Report is placed."

10. Despite the respondent being aware that all attempts to serve the petitioner at its purported address in Delhi were unsuccessful, the respondent deliberately did not provide the petitioner's correct address. In fact, it emerges that notwithstanding the above report which clearly stated that the petitioner had left the address more than a year ago and that there was no firm by the petitioner's name at the address furnished in the claim petition, the Labour Court has turned a blind eye to the fact the proceedings before it had not been brought to the petitioner's knowledge.

11. In these circumstances, I have no hesitation in accepting the petitioner's plea that the impugned award has been passed without due service of notice of the proceedings to the petitioner and is, therefore, liable to be set aside on this ground alone.

12. The writ petition is, accordingly, allowed and the matter is remanded back to the Labour Court. The parties will appear before the Labour Court on 16.03.2020.

13. It is made clear that this Court has not examined the merits of the petitioner's plea that no cause of action had arisen in Delhi and, therefore, it will be open for the petitioner to raise a preliminary objection before the Labour Court on the maintainability of the reference on the ground of jurisdiction. In case such a plea is raised by the petitioner, the same shall be treated as a preliminary issue and shall be dealt with by the Labour Court, in accordance with law.

14. At this stage, learned counsel for the petitioner submits that in terms of the order passed by this Court on 17.07.2007, the petitioner

had deposited a sum of Rs.1 lakh with the Registrar General of this Court. He, therefore, prays that the said amount be refunded to the petitioner along with upto date interest. Since the writ petition is being allowed and the impugned award is being set aside, the Registry is directed to forthwith release the amount of Rs.1 lakh along with upto date interest accrued thereon to the petitioner.

JANUARY 15, 2020

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REKHA PALLI, J

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