



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

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CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.34704 of 2014

M/s.Irbaz Shoe Company,
S.P.No.82, Gudiyatham Road,
Chinnavarigam,
Ambur - 635 811,
Vellore District.

... Petitioner

Vs.

1. The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

2. L.A.Nirmala

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 05.07.2013 passed by the 1st Respondent in I.A.No.42 of 2013 for condonation of delay in filing an Application to set aside the exparte order dated 29.07.2011 passed in Claim Petition No.128 of 2010 and set aside the same and consequently allow the said I.A.No.42 of 2013 for condonation of delay.

For Petitioner : Mr.C.P.Sivamohan
For 2nd Respondent : M/s.S.Thamizharasi

O R D E R

Petitioner/Management has come up with this Writ Petition challenging the order dated 05.07.2013 passed by the 1st Respondent/Labour Court in I.A.No.42 of 2013 in Claim Petition No.128 of 2010, refusing to condone the delay of 574 days in filing an Application to set aside the exparte order dated 29.07.2011 passed in Claim Petition No.128 of 2010.

2. The case of the 2nd Respondent/employee is that, she resigned her job and that, the Petitioner/Management did not pay her monetary benefits, which forced her to file a Claim Petition in C.P.No.128 of 2010, claiming a sum of Rs.56,534.94 under various heads. The Petitioner/Management filed a counter in the said Claim Petition. As there was no representation on behalf of



the Management, the Labour Court proceeded to render a finding on merits on 29.07.2011 in C.P.No.128 of 2010.

3. Learned counsel for the Petitioner/Management submitted that, though, the Management filed a counter in the Claim Petition and communicated the same to the 2nd Respondent/employee to report for work, the 2nd Respondent did not report for work. According to him, entire case papers were misplaced and they were obtained through Copy Application and the exparte order came to light only after issuance of notice in E.P.No.3 of 2013. He went on to state that, misplacement of case papers has caused the delay of 574 days in filing an Application seeking to set aside the exparte order dated 29.07.2011 made in Claim Petition No.128 of 2010 and that, the delay in filing the Condone Delay Petition is neither wilfull nor wanton, but, due to the aforesaid circumstances and that, the Labour Court ought not to have rendered an adverse finding against the Management, when there was no communication to the Management by the Lawyer.

4. According to the learned counsel for the Petitioner/Management, a substantial portion of the amount as stated by the 2nd Respondent/employee has already been paid to her. Moreover, the Petitioner Industry is not functioning and hence, the Management has offered to settle the matter with the employee. It is pointed out by the learned counsel that, pursuant to the suggestion made by this Court, though the Management came forward with a Demand Draft for a sum of Rs.15,000/- (Rupees Fifteen Thousand only), the employee did not accept the same. Learned counsel contended that, for the non-appearance of the Lawyer, the Management should not be put to hardship. He prayed that, the case shall not be thrown out, when almost 50% of the amount has already been withdrawn by the 2nd Respondent/employee.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. A reading of the order passed by the Labour Court would make it clear that, for the fault of the Lawyer, the litigant should not be made to suffer. That apart, the Labour Court should have asked the employee to enter into the box and posed a question as to how she is demanding wages under various categories. Simply, by accepting the pay slips produced by the employee, an order has been passed and it cannot be said to be an order on merits.

7. Rule 34 and Rule 48 of the Tamilnadu Industrial Disputes Rules, 1958, makes it very clear that, when a party is absent, the Tribunal/Labour Court will have to proceed as if,



the other party is present and render a finding on merits. Though the Rule is contemplated for the purpose of rejecting an Industrial Dispute on file, the same procedure will apply to the proceedings in Claim Petitions also.

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8. When the delay is enormous and the amount of claim is only Rs.56,534.94 and that, the 2nd Respondent/employee has withdrawn a sum of Rs.28,000/- pursuant to the interim orders of this Court, the Petitioner/Management will have to pay the balance amount to the 2nd Respondent/employee together with interest.

9. Though, I fully agree that, the reasons mentioned in the Affidavit need to be considered for condonation of delay and the matter has to be remanded, taking note of the fact that, there was a delay of two years and that, the entire delay has not been properly explained, remitting the matter at this stage when the Claim Petition is of the year 2010 would not serve the purpose. As a decade has gone by since the filing of the Claim Petition and to give a quietus to the litigation, this Court, instead of remanding the matter, directs the Petitioner/Management to pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) to the 2nd Respondent/employee, over and above what has already been paid, as full and final settlement of her claim, within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is disposed of with the above direction. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

+1cc to Mr.S.Thamizharasi, Advocate, S.R.No. 30072

W.P.No.34704 of 2014

KV(CO)
GN(18/08/2021)