



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD) No. 16546 of 2013 and
M.P(MD).No.1 of 2013

R.M. Rangarajan (died)

1.R.Tamilselvan

2.R.Vijayarengan

3.R.Karthikeyan

4.M.Kanimozhi

(P1 to P4 are brought on record as LR
of Deceased petitioner vide Court order
dated 10.11.2021 in WMP(MD).No.13226/2021
in W.P(MD).No.16546 of 2013)

:Petitioners

.vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.C.M.Sevugarathinam @ Rathinam

: Respondents

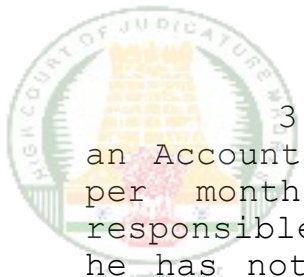
PRAYER: Writ Petition filed under Article 226 of the Constitution
of to issue a Writ of Certiorari to call for the records pertaining
to the Award made in C.P.No.11 of 2011, dated 23.07.2013 passed by
the 1st respondent and quash the same.

For Petitioners : Mr. P.R. Prithiviraj
For R2 : No appearance

O R D E R

This Writ Petition is preferred by the Proprietor Padmas
and Company against the award made in Claim Petition No.11 of 2011
dated 27.07.2013.

2. The facts of the case stated in the affidavit are that
the second respondent claiming himself to be an employee of the
petitioner has filed claim petition before the first respondent
seeking arrears of salary for a period from 01.02.1990 and August
1997 to the tune of Rs.1,29,480/-; Dearness allowance for the said
period Rs.27,352/-; bonus Rs.47,400/- and salary for weekly
holidays for Rs.27,580/- and yearly leave salary for Rs.6,370/-
totally Rs.2,38,182/-.



3. According to the second respondent, he joined duty as an Accountant on 01.02.1990 with the monthly salary at Rs.2,100/- per month in the petitioner's finance business and he is responsible for running the shop. The second respondent has claimed he has not paid any salary. Suddenly, the petitioner has stopped the second respondent from work alleging misappropriation of funds and has preferred a police complaint. The second respondent's father fearing over the dignity had agreed to execute mortgage deed.

4. The petitioner has filed a counter and contested the case before the Labour Court. It is the claim of the petitioner that the second respondent is not at all his employee. The petitioner is running a finance business in a small village namely Irumbuthalai and there is no need to engage extra workers. The second respondent's father requested the petitioner to give his son proper advise and also to educate him with some business techniques since he was wandering and creating unnecessary problems. In the meanwhile, the second respondent's father requested Rs.1,06,000/- to clear their joint family debts and for the same the second respondent's father created a mortgage and the mortgage was executed on 06.10.1997. In the meanwhile, the second respondent's father died and the petitioner demanded amount. Since the amount ought to be recovered, the petitioner has filed the suit in O.S.No.59 of 2007 on the file of Sub Court, Sivagangai. The second respondent contested the suit and finally the Sub Court has granted a decree on 20.12.2010. After the lapse of 14 years, the second respondent has filed the claim petition that too after the suit was decreed in favour of the petitioner.

5. Heard the learned counsel for the petitioner. The second respondent was issued notice and has received the notice, but has not chosen to appear before this Court either through any counsel or as a party in person. Several opportunities were given to him to appear before the Court. Therefore, based on the records this Court proceeds to pass order.

6. The Labour Court has granted Award in favour of the second respondent based on Ex.P2, which is a notice issued by the second respondent to the petitioner alleging the petitioner has not received wages for the work done in the petitioner's shop. Since the petitioner has not chosen to reply, the Labour Court has come to the conclusion that the notice is genuine and granted relief. On perusing the notice, it is seen that the second respondent has issued notice as early as on 03.01.2000. If the petitioner has not responded to the same, the second respondent ought to have filed the claim petition within a reasonable time. But the second respondent has chosen to file the claim petition in the year 2011, nearly after 11 years, which is clearly hit by latches. The petitioner submitted that the petitioner has given a sum of Rs.2,00,000/- to the second respondent's father in the year 1997



since the same was not repaid the petitioner has filed a suit in O.S.No.59 of 2007 and the same was decreed in favour of the petitioner on 20.12.2010. As a counter blast the second respondent has filed claim petition before the Labour Court.

7. The petitioner has filed counter before the Labour Court stating that the Labour Court has no jurisdiction, since it is only shop, the Industrial Disputes Act is not applicable. If at all the claim is maintainable then it is under Tamil Nadu Shops and Establishments Act, 1947 and the appropriate authority is Deputy Commissioner of Labour Court who is having jurisdiction.

8. This Court is convinced that the claim petition is counter blast. Secondly, even though the notice stated in Ex.P2 was issued, the second respondent has not chosen to file a claim petition within a reasonable time before the Labour Court. Pending writ petition the petitioner died and his legal heirs are impleaded as parties, at this stage the liability cannot be fasten on the legal heirs. Moreover as rightly pointed out by the petitioner the Labour Court is not having any jurisdiction. Therefore, this Court is inclined to set aside the Award passed by the Labour Court and the impugned award is quashed.

9. Accordingly, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

To

The Presiding Officer,
Labour Court,
Madurai.

W.P(MD) No. 16546 of 2013 and
M.P(MD) .No.1 of 2013

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