



\$~47(Appellate)

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

+ **CM(M) 126/2022 & CM No. 6248/2022**

M/S OCEAN KNIT FAB INNER WEAR Petitioner
Through: Mr.Deepanshu Choithani,
Mr.Mayant Pachauri and Mr.Shivam Gupta,
Advs.

versus

MAHESH JHA (NOW DECEASED) Respondent
Through: Mr.Ramjee Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **13.07.2022**

1. This petition under Article 227 of the Constitution of India assails orders dated 13th January, 2020 and 15th November, 2021 passed by the learned Presiding Officer, Labour Court (hereinafter referred to as “the learned Labour Court”).

2. These orders read thus:

Order dated 13th January, 2020

13.01.2020

Present: Mr.Markandey Shukla, AR for Workman.
None for management.
WW1 Sh. Nikhil Jha is present.
None appeared on behalf of management.

It is 1pm. Management is proceeded exparte
for today.

WW1 is examined and discharged.



It is submitted on behalf of workman that no other witness is to be examined.

Workman evidence is closed.

List the matter for management evidence for 22.2.2020.

Copy of affidavit of witnesses be supplied in advance to opposite party.

(Anil Kumar)
Presiding Labour Court XVI
Rouse Avenue Courts, New Delhi
13.1.2020”

Order dated 15th November, 2021

Date:15/11/2021

Matter has been taken up for physical hearing pursuant to Order No.798/RG/DHC/2021 dated 29/10/2021 of Hon'ble High Court of Delhi followed by Order No.Power Gaz/RACC/2021/25523-25622-C dated 29/10/2021 of Ld. Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue Court Complex, New Delhi.

Present: Shri Markandey Shukla, AR for workman.

Ms. Mansi, Intern for Shri Vijay Kumar Bhasin for management.

Adjournment is sought on the ground that AR/counsel for management is unwell.

Adjournment sought is strongly opposed by AR for workman.

Submissions heard.

Examination-in-chief of Shri Nikhil Jha (son/LR of workman) was recorded on 13/01/2020 whereas application dated 18/11/2020 seeking opportunity to cross-examine the



witness was physically filed on record on 03/02/2021 wherein Shri Ghanshyam Khandelwal, Proprietor M/s Ocean Knit Fab Inner Wear has averred that having appeared on 22/02/2020 he was shocked to know that AR/counsel for management did not appear in the court on 13/01/2020.

There is no dispute on the principle of law that a litigant should not be made to suffer for the fault of his counsel however mere engaging a counsel does not absolve the party of his/her duty to diligently pursue the case as held in '*Indian Sewing Machine Co. Pvt. Ltd. Vs. Sansar Machine Ltd. & Anr.*' (1994) 56 DLT 45.

Application under Rule 10B sub-rule (9) of Industrial Disputes (Central) Rules 1957 read with Order IX Rule 7 CPC on behalf of management is therefore dismissed.

Matter is adjourned to 20/12/2021 for final arguments.

Sd/-
(Tarun Yogesh)
POLC-08/RADC, New Delhi
Dt.15/11/2021"

3. The application filed by the petitioner, as the respondent before the learned Labour Court, seeking setting aside of the decision to proceed against the respondent *ex parte* on 13th January, 2020 and an opportunity to cross examine WW-1, specifically states that the petitioner was unaware of the fact that his Counsel had not appeared before the learned Labour Court on 13th January, 2020. Invoking the principle that a litigant should not be punished for default of his Counsel, the petitioner sought an opportunity to cross examine WW-1.

4. That application stands rejected by the subsequent order dated 15th November, 2021. Interestingly, the learned Labour Court has, even while rejecting the application, acknowledged, in one breadth,



the principle that a litigant should not be made to suffer for a fault of his Counsel and in the very next, commenced that mere engaging of a Counsel would not absolve a party of his duty to diligently pursue his case.

5. It is not necessary to enter into all these aspects. Admittedly, the Counsel was absent only on one occasion i.e. on 13th January, 2020.

6. The right to effectively prosecute a proceeding is part of the fundamental right to avail legal remedies. Effective prosecution of a proceeding involves, within itself, the right to lead evidence as well as to counter the evidence led by the opposite party.

7. As such, given the fact that there is no inordinate or contumacious default on the part of the petitioner, I am of the opinion that the learned Labour Court ought to have acceded to the petitioner's request for one opportunity to cross examine WW-1.

8. In view thereof, without commenting further on the present dispute, this petition is disposed of with a direction to the respondent to make WW-1 available for cross examination by the petitioner on the next date before the learned Labour Court which is stated to be 23rd July, 2022. On the said date, the petitioner should be prepared and ready to cross examine WW-1. No further date would be given for the said purpose.



9. This petition stands disposed of in the aforesaid terms.
10. The petitioner is also directed to pay costs of ₹ 5,000/- to the respondent on or before the next date of hearing.

C. HARI SHANKAR, J.

JULY 13, 2022/kr

