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

+ **W.P.(C) 15694/2022**

G4S SECURE SOLUTIONS (I) PVT. LTD. Petitioner

Through: **Mr. Gulshan Chawla with**
Mr. Krishnadas Marar, Advocates.

versus

SWAMI NATH RAI Respondent

Through: **Mr. Ganesh Singh, Advocate.**

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Date of Decision: 15th November, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL.48838/2022 & CM APPL.48857/2022 (exemption)

Exemptions allowed subject to all just exceptions.

W.P.(C) 15694/2022 & CM APPL.48837/2022 (stay)

1. Present writ petition has been filed challenging the orders dated 17.07.2018, 27.10.2018 and 13.10.2022. The petitioner was proceeded ex-parte vide order dated 17.07.2018 by the learned POLC-V, Dwarka Courts, Delhi. Thereafter, vide the impugned order dated 27.10.2018, the award was passed by the learned Labour Court. Thereafter, an application was

moved by the petitioner for setting aside the order dated 27.10.2018. The said application was dismissed by the learned POLC-V vide order dated 13.10.2022. The petitioner has challenged these orders on the ground that the learned Labour Court has passed the impugned Award dated 27.10.2018 without giving any reasons. Even the award is silent about any discussion on the alleged termination of the workman.

2. Learned counsel for the petitioner has further submitted that admittedly, summon was received by one Sh. Himanshu, who was the clerk in the company of the petitioner. Learned counsel for the petitioner submits that Sh. Himanshu was not an authorized representative of the Company and therefore, it cannot be taken as a proper service. Reliance has been placed upon *M/s. Shalimar Rope Works Ltd. vs. M/s. Abdul Hussain*: AIR 1980 SC 1163.

3. Learned counsel for the petitioner submits that Order XXIX of CPC lays down the procedure for service of summons in case of the Corporation. Learned counsel for the petitioner submits that in case of service of the summons, it has to be served on the Secretary or any Director or other Principal Officer of the Corporation.

4. Learned counsel for the petitioner submits that in *M/s. Shalimar Rope Works Ltd.* (supra) also the summons were allegedly served on one of the employees of the Company, who was merely an Office Assistant in the Sales Department of the Company. In that case also the said employee did not bring the fact of the receipt of the summons by him to the knowledge of any responsible officer of the Company. It has been submitted that the High

Court took the view that since the said person was an employee of the Company sitting in its registered office in Calcutta, the summons will be deemed to have been duly served on the Company within the meaning of first part of clause (b) of Order 29, Rule 2 of the Code.

5. However, the Supreme Court did not agree with the view of the High Court and *inter alia* held as under:-

“8. Sending summons to a corporation by post addressed to it at its registered office may be a good mode of service either by itself, or preferably, by way of an additional mode of service. But leaving the summons at the registered office of the corporation if it is literally interpreted to say that the summons can be left anywhere uncared for in the registered office of the company, then it will lead to anomalous and absurd results. It has to be read in the background of the provision contained in Order 5 Rule 17 of the Code. In other words, if the serving peon or bailiff is not able to serve the summons on the Secretary or any Director or any other Principal Officer of the Corporation because either he refuses to sign the summons or is not to be found by the serving person even after due diligence then he can leave the summons at the registered office of the company and make a report to that effect. In the instant case nothing of the kind was done. It was not the case of the respondent in its rejoinder filed in the Miscellaneous case that the service of the summons as effected in accordance with the first part of clause (b) of Rule 2 of Order 29 of the Code. Annexure A to the counter affidavit filed by the respondent is the petition filed by the appellant under Order 9 Rule 13 of the Code. In paragraph 9 of the said petition it was stated:-

"Inspection of record of this Hon'ble Court relating to the service of the summons reveals that the bailiff of the Small Cause Court at Calcutta seems to have delivered a copy of the summons to a gentleman who is described as

an office assistant, on 17-3-1975 at about 12.40 P.M. No office assistant of the defendant No. 1 Company is empowered or authorised to receive summons. The original summons which has been returned by the bailiff to this Hon'ble Court, has been signed by one Shri Nawlakha. Shri Nawlakha was concerned merely with sales and had nothing to do with legal matters generally or with receiving summons in particular. Service of the summons on Shri Nawlakha cannot be regarded as due service on the defendant No. 1 for the purpose of Order 9 Rule 13 C.P.C."

The rejoinder of the respondent is Annexure B to the counter affidavit. Para 9 of the rejoinder which is in reply to para 9 of the petition reads as follows:-

"In reply to para 9 it is stated that the summons was duly served as stated in this para. But it is denied that Shri Nawlakha was concerned merely with sales and has nothing to do with legal matters, generally or with receiving summons in particular. It is denied that service on Shri Nawlakha cannot be regarded as due service on the Company Defendant No. 1 for the purpose of Order 9 Rule 13 C.P.C. Shri Nawlakha was a responsible officer who could have intimated the receipt of the summons to his so called bosses. Without prejudice it is submitted that the Madhya Pradesh amendment in Order 9 Rule 13 C.P.C. may kindly be perused."

No where in the rejoinder a stand was taken that the summons was duly served on the company because it was left at the registered office of the company. Reference to the Madhya Pradesh amendment of Order 9 Rule 13 is immaterial as the Trial Court has pointed out that the company had no knowledge of the ex-parte decree, even otherwise, before 29-7-1975. No contrary finding has been recorded by the High Court."

8. Learned counsel for the petitioner submits that in these facts and

circumstances of the case, the ex-parte order dated 17.07.2018 may be set aside and the Labour Court may be directed to adjudicate the matter on merits.

9. Issue notice. Mr. Ganesh Singh, Advocate, who appears through video conferencing, accepts notice on behalf of the respondent/workman. Since the short point is involved, I propose to dispose of the writ petition on merits, with the consent of the parties.

10. Learned counsel for the respondent/workman has vehemently opposed the present writ petition. Learned counsel submits that there is no ground to set aside the order dated 13.10.2022, whereby the application for setting aside the order dated 27.10.2018 has been rejected by the learned Labour Court. Learned counsel submits that the petitioner has failed to fulfill any of the conditions as prescribed under Order IX Rule 13 CPC. It has been submitted that the application for setting aside the order has also not been moved within one month of passing of the Award.

11. It has further been submitted that admittedly the summons were served on Sh. Himanshu, who was in HR(Lead) Department of the petitioner Company. Learned counsel for the respondent/workman submits that the learned Trial Court has rightly reached to the conclusion that the petitioner Company was duly served. Learned counsel for the respondent has further submitted that Sh. Himanshu had also appeared before the Labour Commissioner during the conciliation proceedings.

12. Learned counsel for the respondent submits that the present petition filed by the petitioner is merely a delaying tactic. Learned counsel submits

that the respondent/workman was illegally removed in the year 2016 and for the last 6 years, the respondent/workman is without any work and in acute financial crisis. Learned counsel for the respondent/workman submits that therefore the present petition may be dismissed.

13. I have considered the submissions of the learned counsel for the parties. Before taking into account the grounds for setting aside the ex-parte order, it is necessary to look into the impugned award. The finding/conclusion, as recorded by the learned Labour Court, in the impugned order dated 27.10.2018, is as follows:-

“10. After considering the claim, reply, document and the evidence led on record, decision of the court, is as under:- .

11. As the management has not come forward to file any Written Statement or to cross-examine the claimant or to lead its own evidence, the evidence of the claimant remain uncontroverted and unrebutted and as such accepted on its face value.

12. Hence, the claimant is held entitled to the relief of reinstatement with full back wages and continuity of service.

13. Reference answered accordingly.

14. Let copy of the award be sent to the appropriate Govt. for its publication as per rules.”

15. A bare perusal of this finding/conclusion makes it clear that the learned Labour Court has passed the award mechanically even without looking into the fact as to whether the respondent/workman had brought sufficient material on record for passing the award in his favour. Labour Courts are not supposed to pass the order mechanically. Even if the

petitioner/management was ex-parte, the learned Labour Court was wrong to see that whether the statutory requirement for passing the award is fulfilled or not.

16. In the case titled ***Ramesh Chand Ardawatiya vs. Anil Panjwani***: AIR 2003 SC 2508, the Supreme Court has *inter alia* held that even if the defendant is ex-parte, the Courts are under the duty to see that the plaintiff has proved his case to the satisfaction of the Court. Though the burden of proof may not be very heavy but a *prima facie* proof of the relevant facts constituting the cause of action should be there. It is also settled proposition that ordinarily litigation should be adjudicated on merits and it should not be terminated by default either of the plaintiff or the defendant. Reliance may be placed on ***Robin Thapa vs. Rohit Dora***: (2019) 7 SCC 359.

17. I consider that while setting aside the ex-parte order dated 17.07.2018, the learned labour Court should have looked at least into the statutory requirements. The award under challenge is totally non-speaking. The petitioner has come with clean hands and has not denied the service of summons of one of his employees but has taken a plea that the employee never informed the authorized officer of the Company. Even the affidavit of Sh. Himanshu has been filed during the proceedings for setting aside ex-parte order dated 17.07.2018 where he has admitted that though he received the summons but never brought it to the notice of the authorised representative of the Company.

18. I consider that taking into account the totality of facts and circumstances of the case and for adjudication of the claim on merits, the ex-

parte order dated 17.07.2018 may be set aside. However, in order to balance the interest of the respondent/workman, the amount deposited by the petitioner/management before the learned Labour Court in the sum of Rs.2,65,200/- and Rs.91,800/- be released to the respondent/workman. However, such release shall be subject to the final adjudication of the disputes on merits. The respondent/workman shall file an indemnity bond before the learned Labour Court that in case the petitioner/management succeeds before the learned Labour Court, the amount shall be refunded back to the petitioner/management. The petitioner/management is further burdened with a cost of Rs.25,000/- in the form of litigation expenses in addition to whatever has been paid earlier.

19. Parties are directed to appear before the learned Labour Court on 02nd December, 2022.

20. With these observations, the present petition along with the pending application stands disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 15, 2022

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