



*W.P.No.15798 of 2009*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.P.No.15798 of 2009 &  
M.P.No.1 of 2009

The Management of  
Arul Mosaic Floorings,  
97, Perur Main Road,  
Selvapuram, Coimbatore -641 026.

... Petitioner

Vs

1.The Presiding Officer,  
Labour Court,  
Coimbatore -18.

2.R.Arumugam

... Respondents

**PRAYER:-** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records culminating in order of the first respondent in Interlocutory Application No.103 of 2006 in I.D.No.476 of 1999, dated 29.06.2006, on the file of Labour Court, Coimbatore, quash the same and direct the first respondent to condone the delay in filing the application to set aside the

*Page No: 1/9*



W.P.No.15798 of 2009

exparte order passed against the petitioner on 05.06.2000, consequently direct the first respondent to number the interlocutory application to set aside the exparte order passed against the petitioner on 05.06.2000, consider the same on merits and pass such further order.

For Petitioner : Mr.G.B.Saravanabhavan

For Respondents : R1- Labour Court

Mr.C.K.Chandrasekar for R2

### **ORDER**

The challenge in this Writ Petition is the rejection of the application filed by the petitioner to condone the delay in filing the application to set aside the exparte award passed against the petitioner on 05.06.2000.

2. Heard Mr.G.B.Saravanabhavan, learned counsel appearing for the petitioner and Mr.C.K.Chandrasekar, learned counsel appearing for the second respondent.

3. The case of the petitioner is that an exparte award which came to be passed against the petitioner on 29.06.2006, directing the petitioner to reinstate the second respondent with continuity of service

*Page No: 2/9*



W.P.No.15798 of 2009

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with full backwages and other benefits.

4. Immediately on having the knowledge of an exparte award, an application had been filed seeking to set aside the exparte award along with an application to condone the delay.

5. The learned counsel appearing for the petitioner would submit that the Tribunal had held that the notice of the summons in the Industrial Disputes had constructively been served on the petitioner and that the Tribunal had become functus officio in view of the dictum laid in **2004 III LLJ page 1141**, that upon on expiry of 30 days from the date of publication of award, the award become enforceable and the Labour Court would become functus officio had rejected the application to condone the delay.

6. The learned counsel for the petitioner would rely upon the judgment of the Hon'ble Apex Court made in Civil Appeal No.5650 of 2018, dated 18.05.2018 and contend that the Hon'ble Apex Court had held that merely because an award become enforceable does not necessarily mean the award is binding. For an award to be binding, it

Page No: 3/9



*W.P.No.15798 of 2009*

WEB COPY

should have been made in compliance with the principles of natural justice and that the Labour Court had not become functus officio, after the award has become enforceable as far as setting aside the exparte award is concerned. Therefore, he would submit that the order passed by the Tribunal in the order impugned would have to be set aside and the Tribunal ought to be directed to consider the application on merits.

7.Countering his arguments, Mr.C.K.Chandrasekar, learned counsel appearing for the second respondent would submit that the Tribunal had considered the case of the petitioner on merits also to come to a conclusion that the petitioner had been constructively served with the summons in the main OP. Therefore, he would submit that the Tribunal had not only the rejected the claim of the petitioner on the ground it had become functus officio and but also on merits. Therefore, there is no necessity to interfere with the order passed by the Tribunal.

*Page No: 4/9*



W.P.No.15798 of 2009

WEB COPY

8. I have considered the rival submissions made on either side and perused the materials placed on record.

9. An exparte award had been passed against the petitioner which is sought to be set aside by filing an appropriate application along with an application to condone the delay. A perusal of the order impugned before this Court, it could be seen that the same had been made on the ground that the summons had been served on the petitioner in the main OP and that the first respondent had become functus officio, as the award become enforceable. The first respondent had not considered the application for the delay particularly. It has not dealt with the reasons that had been stated by the petitioner in its application to condone the delay and thereafter, proceeded to pass orders on merits. It had been mainly driven by the conclusion made in the judgment reported in **2004 III LLJ page 1141**, that the Tribunal beyond the period of 30 days had become functus officio. In such circumstances, it would be useful to analyse the judgment of the Hon'ble Apex Court relied upon by the learned counsel for the petitioner made in Civil Appeal No.5650 of

Page No: 5/9



W.P.No.15798 of 2009

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2018, the Hon'ble Apex Court in the aforesaid judgment had held as follows:-

35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary,



W.P.No.15798 of 2009

*incidental or inherent.*

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10. The Hon'ble Apex Court in the aforesaid judgment had held that as just because an award had become enforceable would not mean the Tribunal become functus officio as far as setting aside the exparte award is concerned. Further the Hon'ble Apex Court in clear terms had held that for an award to become binding, it should have been passed in compliance with the principles of natural justice. The Tribunal ought to have decided that there was no violation of principles of natural justice.

11. In view of the aforesaid reasonings and findings, I am inclined to interfere with the order impugned in this Writ Petition.

12. In fine, the Writ Petition is allowed and the order impugned is set aside and the first respondent is directed to take application for condoning the delay in setting aside the exparte award and pass orders on merits and thereafter proceed further. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

*Page No: 7/9*



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*W.P.No.15798 of 2009*

**21.12.2023**

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Index : Yes/No  
Speaking order : Yes/No  
Neutral Citations : Yes/No

*Page No: 8/9*



WEB COPY



*W.P.No.15798 of 2009*

**K.KUMARESH BABU,J.**

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To  
The Presiding Officer,  
Labour Court,  
Coimbatore -18.

W.P.No.15798 of 2007

21.12.2023

*Page No: 9/9*