



W.P.No.37272 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.37272 of 2016
and
W.M.P.No.31972 of 2016**

The Management,
Perfetti Van Melle India (P) Limited,
No.7, Karanai Puduchari Village,
Urappakkam (Via),
Guduvancherri,
Chennai - 603 202.

... Petitioner

Vs.

1. The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.
2. The General Secretary,
Perfetti Van Melle Employees Centre,
No.18:51, EWS Mj-1, Parimelazhar Street,
Maraimalai Nagar,
Kancheepuram - 603 209.

... Respondents



W.P.No.37272 of 2016

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the first respondent culminating the order passed in I.A.No.136 of 2015 in I.D.No.18 of 2014 dated 23.06.2016 and quash the same.

For Petitioner : Mr.C.Mohan
for M/s.King and Patridge

For Respondents : R1 - Tribunal
Mr.V.Ajoy Khose for R2

ORDER

The petitioner is the Management. The present Writ Petition directed against the order passed by the Industrial Tribunal in I.A.No.136 of 2015 in I.D.No.18 of 2014 dated 23.06.2016 whereby the petition to condone the delay of 335 days in filing the petition to set aside the ex-parte order dated 11.11.2014 in I.D.No.18 of 2014 was allowed by the Tribunal. The said Industrial Dispute was filed by the second respondent / Union raising dispute against the service condition, promotion and other demands pertaining to the employees of the petitioner / Management.



W.P.No.37272 of 2016

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2. Though the Industrial Dispute was raised by the second respondent / Union, despite receipt of notice, the second respondent / Union failed to appear before the Tribunal on various dates of hearings and finally, the matter was adjourned to 11.11.2014 for filing claim statement by the second respondent / Union as a last chance. Even then, the second respondent / Union failed to appear before the first respondent / Tribunal and therefore, the award was passed dismissing the Industrial Dispute by award dated 11.11.2014. Thereafter, the second respondent / Union filed I.A.No.136 of 2015 seeking to condone the delay of 335 days in filing an application to set aside the ex-parte award dated 11.11.2014 in I.D.No.18 of 2014. Though the petitioner / Management filed a detailed counter affidavit stating that the second respondent / Union had deliberately avoided to proceed with the Industrial Tribunal and failed to file the claim statement before the Tribunal, the reference was closed and the award was passed; that the second respondent / Union had not explained any sufficient or reasonable cause for 335 days delay and hence, the petitioner / Management prayed to dismiss the application in I.A.No.136 of 2015.



W.P.No.37272 of 2016

WEB COPY

3. However, the first respondent / Tribunal despite recorded that the second respondent / Union has not engaged any counsel on their own or not even have appeared for a single hearing date and has not taken any efforts to proceed with the Industrial Dispute as condoning the delay of 335 days of allowing the I.A. Subsequently, the second respondent / Union filed a petition before the Tribunal in I.A.No.136 of 2015 to set aside the ex-parte award dated 11.11.2014 and to restore I.D.No.18 of 2014 and the same was posted for hearing and further arguments. Aggrieved by the said order, the petitioner / Management has preferred the present Writ Petition.

4. The learned counsel appearing for the petitioner / Management vehemently contends that the first respondent / Tribunal ought to have considered that under Section 17-A of the Industrial Disputes Act, 1947, an award becomes enforceable on the expiry of thirty days from the date of its publication. The first respondent / Tribunal had become functus officio upon the expiry of thirty days from the date of publication of the award, the same having become enforceable and hence, the Industrial Tribunal had no



W.P.No.37272 of 2016

WEB COPY

jurisdiction to set aside the ex-parte award under Section 17-A of the Act. The first respondent / Industrial Tribunal failed to note that the second respondent / Union though by their own admission, had knowledge of the ex-parte award dated 11.11.2014 on 28.11.2014 itself, chose to file an application to set aside the ex-parte order on 27.10.2015, i.e., long after the knowledge of the ex-parte order and the publication of the order. Hence, the order of the first respondent / Tribunal in I.A.No..136 of 2015 is contrary to the law and liable to be quashed.

5. I have considered the said submissions made by the learned counsel appearing for the petitioner and the second respondent and have perused the materials placed before this Court.

6. In the case of *Haryana Suraj Malting Limited vs. Phool Chand* reported in (2018) 16 SCC 567, the Hon'ble Supreme Court dealing with similar circumstances, wherein the question that arose for consideration was whether the Industrial Tribunal / Labour Court is functus officio after



W.P.No.37272 of 2016

WEB COPY

the award has become enforceable, and is thus, prevented from considering an application for setting aside an ex-parte award. The Supreme Court has held that merely because an award has become enforceable, that 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. Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace and hence, the power to entertain the application as per the scheme of the Act and in terms and rules with natural justice.

7. In view of the aforesaid decision rendered by the Hon'ble Supreme Court, this Court is inclined to dispose of the Writ Petition with the following directions:

"(i) The first respondent / Tribunal is directed to decide the dispute in between the petitioner / Management and the second respondent / Union and pass appropriate



W.P.No.37272 of 2016

orders within a period of six months from the date of receipt of a copy of this order.

(ii) However, liberty is granted to the petitioner / Management and the second respondent / Union to canvass 12(3) settlements entered between them on 25.03.2015, 01.08.2018 and 04.02.2021 before the first respondent / Tribunal in the manner known to law.

8. Accordingly, this Writ Petition is disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

26.07.2023

NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.



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W.P.No.37272 of 2016

M.DHANDAPANI, J.

vji

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26.07.2023