

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA-38-2023 (O&M)
Decided on : 20.02.2023**

Laxman @ Laxman RawatAppellant(s)

Versus

M/s Hariom Forging (P) Ltd. & anotherRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.A.P.Bhandari, Advocate for the appellant.

G.S. Sandhawalia, J. :-

CM-317-LPA-2023

Application for placing on record the copy of the Award as ex parte is allowed, subject to all just exceptions.

CM stands disposed of.

CM-100-LPA-2023

By this application, the applicant-appellant seeks condonation of delay of 62 days in re-filing the appeal.

In view of the averments made in the application, which is duly supported by an affidavit of the appellant, the application is allowed and the delay of 62 days in re-filing the appeal is hereby condoned.

CM stands disposed of.

LPA-38-2023 (O&M)

1. Consideration in the present Letters Patent Appeal is to the order dated 25.08.2022 of the Learned Single Judge passed in CWP-18794-2022 titled *Laxman @ Laxman Rawat Vs. M/s Hariom Forging (P) Ltd.*, wherein the writ petition filed by the appellant-writ petitioner was

dismissed.

2. Challenge before the learned Single Judge by the workman was to the order dated 03.03.2022 (Annexure P-8) passed by the Labour Court-III, Faridabad wherein it had allowed the application for setting aside the ex-parte proceedings dated 25.03.2019 which was in favour of the appellant-workman. The learned Single Judge, while dismissing the writ petition, came to the conclusion that the Management had been proceeded ex parte by the Labour Court on the first date when the service report was placed before it.

3. The stand of the Management was that it engaged one Mr.Samar Singh, Advocate to represent the matter who had not put in appearance which led to the ex-parte proceedings. Eventually, the award had been passed on 16.05.2019 and at that stage, the Management had come to know about the said fact and it had engaged another counsel, namely, Mr.G.C.Nagpal, who made enquiry regarding the status of the case and it was revealed that the Management was proceeded against ex-parte as the authorized representative had not put in appearance on behalf of the Management on 25.02.2009. Thereafter, counsel had applied for the certified copy of the award dated 16.05.2019 which further revealed that the same had been published on 28.05.2019. He obtained the copies of the record from the Labour Court to get the ex-parte award set aside. Thereafter, CWP-26579-2019 was filed by the Management raising challenge to the order whereby the ex parte award had been passed. Liberty was given to approach the Labour Court in accordance with law and the writ petition was dismissed as withdrawn on 19.09.2019 with the said liberty. Thereafter, application was filed before the Labour Court on 20.12.2019 and eventually, there was delay of merely 3 months which was

condoned, which was held to be reasonable approach taken by the Labour Court by the learned Single Judge which was in consonance with the provisions, principles and philosophy of law. The argument that it became enforceable after 30 days of publication and that would be a decree and that there was bar, was rejected by noticing the fact that the Labour Court was not rendered functus officio, in view of the judgment of the Apex Court in **M/s Haryana Suraj Malting Ltd. Vs. Phool Chand, AIR 2018 SC 2670** which was a judgment on a specific reference to a Three Judge Bench. Resultantly, the writ petition was dismissed.

4. Counsel has vehemently argued that the application should have been filed within 30 days and the notice was served upon the Management but there was no sufficient cause and therefore, the inordinate delay of 3 months should not have been condoned by the Labour Court.

5. The whole purpose of the Industrial Disputes Act, 1947 is to provide ready redressal to the workman but unfortunately, the workman on his own act, is contesting tooth and nail on every little issue and filed reply only on 22.02.2021. Apparently, the application was filed on 20.12.2019 but on account of the contest, the ex-parte award was only set aside on 03.03.2022 by awarding Rs.7000/- as costs and setting aside the earlier ex-parte proceedings and the ex-parte award and restoring Reference No.15 of 2019 to its original number, which was rather keeping in view the fact that once this Court had been approached by filing the writ petition after the ex-parte award was passed on 16.05.2019 and the management had raised the challenge to the ex-parte award and the matter had been relegated to file appropriate application before the Labour Court in

accordance with law. The Labour Court was under bounden duty to act on the same and has rightly allowed the application on merits, keeping in view the law laid down by the Apex Court in M/s Haryana Suraj Malting Ltd. (supra).

6. As noticed above, the reply was also filed at a belated stage and thus, the workman is constantly delaying the proceedings as he is contesting tooth and nail on avoidable issues by firstly approaching the Writ Court against the order dated 03.03.2022 after a period of almost 5 months in August, 2022 and even the present appeal has been re-filed after various objections on 12.01.2023 and firstly had come up on 16.01.2023. The said sequence of events would go on to show that the delay, if any, is at the hands of the workman himself and thus, the argument raised that the application has to be filed within 30 days is without any basis which has been dealt with by the learned Single Judge. Merely because the affidavit of the concerned counsel has not been filed would not be a ground since no counsel would give an affidavit that it was his fault that he had failed to put in appearance before the Labour Court at the initial stage when engaged. It has already come on record that notice had been sent through registered post on 25.03.2019 and ex-parte proceedings were directed on the said date itself and the matter was fixed for 01.05.2019 and the award was passed on 16.05.2019 within a short time frame of 1 ½ months.

7. The order which was subject matter before the learned Single Judge thus, does not suffer from any infirmity on which account he could have exercised the jurisdiction under Article 226/227 of the Constitution of India as he is not acting as a Appellate Court. Resultantly, we do not

find any ground to interfere in the same and the present appeal is hereby dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

20.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No