

117

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

CWP-24726-2023

Date of Decision: 03.11.2023

M/s A Square Fire Safety Services

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Labour Court-III, District Faridabad
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rakesh Sobti, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner – M/s A Square Fire Safety Services (hereinafter referred as ‘the petitioner-Management’) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing impugned *ex parte* award dated 16.12.2019 (Annexure P-14) passed by the learned Industrial Tribunal-cum-Labour Court-III, Faridabad (in short ‘the Tribunal’), whereby the industrial dispute raised by respondent No.2 (Deepika Sharma) by way of filing her claim statement under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short ‘the 1947 Act’) has been allowed and the petitioner-Management has been directed to reinstate respondent No.2 in service with continuity

thereof and other consequential benefits; and also to pay 50% back wages to her from the date of demand notice till her reinstatement in service by considering her last drawn salary as Rs.17,000/- per month.

A further prayer has been made by petitioner-Management for setting aside impugned order dated 23.08.2023 (Annexure P-25) passed by the Tribunal below, whereby the application filed under Order 9 Rule 13 of the Code of Civil Procedure by petitioner-Management, seeking setting aside of *ex parte* award dated 16.12.2019 (Annexure P-14), has been dismissed.

2. Briefly, respondent No.2 raised an industrial dispute by filing her claim petition before the Tribunal below, wherein she claimed that she was appointed by the petitioner-Management on 15.11.2015 and was designated as Manager Commercial on a salary of Rs.15,000/- per month. She claimed that the duties assigned to her were clerical in nature and appointment letter dated 23.11.2015 was issued to her by the petitioner-Management. Respondent No.2 stated that her appointment was for a period of twelve months, i.e. from 15.11.2015 to 14.11.2016, however, the petitioner-Management did not relieve her on 14.11.2016 and kept on assigning her duty up to 02.07.2018. Respondent No.2 claimed that on 02.07.2018, petitioner-Management informed that her services were not required w.e.f. 03.07.2018, and accordingly, her services were terminated on 03.07.2018 in an arbitrary and illegal manner without payment of any retrenchment compensation and in violation of the mandatory provisions of Section 25-F of the 1947 Act. It was claimed by respondent No.2 that at the time of termination of her services, she was drawing salary of Rs.17,000/- per month. Respondent No.2 further claimed that she is a married woman and during her employment, she had conceived a child; and when she was in

advance stage of pregnancy, she requested the petitioner-Management to grant her maternity leave with wages, w.e.f. 01.02.2018 up to 31.07.2018, however, the Management did not allow her the same and she gave birth to a child in a Nursing Home at Faridabad on 23.02.2018. Respondent No.2 also stated that when she was refused the maternity leave then she joined the duty on 01.05.2018, i.e. after two months from the date of her delivery. It was alleged by respondent No.2 that the petitioner-Management had not deposited the E.P.F. contributions with the P.F. authorities and she was also not made the member of E.S.I. Accordingly, respondent No.2 prayed for reinstatement with continuity in service and full back wages along with all the consequential benefits.

3. A perusal of impugned award would show that notice of reference was sent to the petitioner-Management through registered post but the same was received back with the report of refusal and accordingly, *ex parte* proceedings were initiated against the petitioner-Management vide order dated 08.11.2019.

4. In *ex parte* evidence, respondent No.2 examined herself as WW-1 and submitted the following documentary evidence:-

<i>Sr. No.</i>	<i>Exhibit(s)</i>	<i>Document(s)</i>
1.	WW1/A	<i>Affidavit</i>
2.	WW1/1	<i>Copy of appointment letter</i>
3.	WW1/2	<i>Copy of statement of account of the period w.e.f. 01.11.2015 up to 01.12.2019.</i>
4.	WW1/3	<i>Copy of Birth Certificate of child.</i>
5.	WW1/4	<i>Copy of legal notice issued to the petitioner-Management.</i>
6.	WW1/5	<i>Copy of additional and revised legal notice and reply to letter dated 18.09.2018 of petitioner-Management in reference to legal notice dated 17.08.2018.</i>
7.	WW1/6	<i>Copy of postal receipt.</i>
8.	WW1/7	<i>Copy of demand notice of respondent No.2.</i>

9. WW1/8 Copy of postal receipt.
10. WW1/9 Copy of letter written by Assistant Labour Commissioner, Circle-III, Faridabad to respondent No.2.

5. Upon considering the material/evidence available on record, Tribunal below answered the reference in favour of respondent No.2 vide impugned *ex parte* award dated 16.12.2019 (Annexure P-14).

6. Thereafter, the petitioner-Management filed an application under Order 9 Rule 13 of the Code of Civil Procedure before the Tribunal below, seeking setting aside of the aforesaid *ex parte* award dated 16.12.2019 (Annexure P-14), which came to be dismissed vide order dated 23.08.2023 (Annexure P-25).

7. In the aforementioned circumstances, the petitioner-Management has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in proceeding *ex parte* against the petitioner-Management and thereafter passing an *ex parte* award dated 16.12.2019 (Annexure P-14). It is submitted that the Tribunal has further erred in dismissing the application under Order 9 Rule 13 of the Code of Civil Procedure filed by the petitioner-Management seeking setting aside of the aforesaid *ex parte* award. Learned counsel for the petitioner contends that petitioner-Management had never received any notice from the Tribunal below and the Management was proceeded against *ex parte* on the very first date of hearing by the learned Tribunal. It is further contended that the impugned *ex parte* award is against the principles of natural justice. Learned counsel submits that non-appearance on behalf of the petitioner-Management before the Tribunal below was wholly unintentional and not willful. It is next submitted that the petitioner-Management came to know

about *ex parte* order dated 08.11.2019 and *ex parte* award dated 16.12.2019

(Annexure P-14), when the Management appeared before the Deputy Labour Commissioner, Faridabad on 05.01.2021 in terms of summon/notice dated 14.12.2020. It is thus submitted that the petitioner-Management had sufficient cause for not appearing before the Tribunal below, and therefore, *ex parte* award dated 16.12.2019 (Annexure P-14) was required to be set aside and the matter should have been decided on merits.

With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside impugned *ex parte* award dated 16.12.2019 (Annexure P-14) as well as order dated 23.08.2023 (Annexure P-25) passed by learned Tribunal below and remitting the matter to the Tribunal below for deciding the reference afresh after affording due opportunity of hearing to the petitioner-Management.

9. I have heard learned counsel for the petitioner-Management and perused the paper book with his able assistance.

10. In the instant case, respondent No.2 (Deepika Sharma) raised an industrial dispute by filing her claim petition before the Tribunal below under Section 2-A(2) of the 1947 Act. In the said petition, learned Tribunal issued notices to the petitioner-Management vide order dated 05.09.2019 and the matter was fixed for 08.11.2019, on which date, the following order was passed:-

“Presence: Sh. S.S. Chauhan, AR for workman.

None for respondent.

Notice sent to the respondent through registered post is received back with the report of 'refusal'. It shows that respondent has knowledge to pendency of the case of the workman. However, none has appeared on behalf of respondent. Case has been called several times since morning. It is already 2.30 p.m. No further wait is justified. Hence, the ex-parte proceedings are initiated against the respondent.

Now to come for ex-parte evidence of workman on 16.12.2019.

(R.K. Yadav)
POLC-III, Fbd.
UDI: HR0093
8.11.2019”

11. Since the notice sent to petitioner-Management through registered post was received back with the report of refusal, therefore, the Tribunal below initiated *ex parte* proceedings against the Management and after taking *ex parte* evidence of respondent No.2, the Tribunal below decided the reference in favour of respondent No.2 by holding her entitled to reinstatement with continuity in service and other consequential benefits along with 50% back wages from the date of demand notice.

12. It appears that the petitioner-Management filed an application under Order 9 Rule 13 of the Code of Civil Procedure seeking setting aside of *ex parte* award dated 16.12.2019 (Annexure P-14), wherein the following stand was taken:-

“2. That applicant-respondent had entered appearance before the Hon'ble court through authorised representative namely Mr. Prabhakar Roy and who was authorised to appear to receive documents to submit written statement/reply on behalf of the applicant-respondent before this Hon'ble court.

3. That the authorised representative of the applicant-respondent did not appear before the Hon'ble court mightily on dated 08.11.2019 and as a result the applicant-respondent-defendant made ex-parte and the Hon'ble court mightily taken ex-parte proceedings evidence of the workmen etc. and passed the ex-parte Decree/award dated 16.12.2019 in favour of the workmen petitioner, further the aforesaid proceedings were not informed by the AR of the applicant-respondent and mightily the authorised representative of the applicant-respondent not made a statement regarding relinquish of the

authorisation and defending the aforesaid reference on behalf of the applicant-respondent and as a result it appears either the AR of the applicant-respondent having collusion with the workmen or absented himself without any statement of relinquish his authorisation with the intent to defeat the justice and attempt to make undue injury and the damages/loss to the applicant-respondent without his negligence. It is further pointed out here that ex-parte Decree/ Award has effected the interest of the applicant-respondent beyond all proportions and scope for no fault of him or negligence of the theirs.

- x - x - x -

5. That it is pertinent to state here that his authorised representative appears intentionally and knowingly mightily having collusion with the workmen because he has not intimated the proceedings of ex parte order dated 08.11.2019 and next date of adjournment as well as not informed the ex-parte decree/award dated 16.12.2019, therefore the applicant-respondent cannot suffer irreparable loss, injury and damages for the intentional and collusive intent of the authorised representative which is evident on record, further after knowledge on dated 05.01.2021 appeared before Ld. DLC Faridabad without delay initiated the aforesaid application under the provisions, in the interest of justice.”

13. Considering the aforesaid application filed by the petitioner-Management, the Tribunal below dismissed the same vide its order dated 23.02.2023 (Annexure P-25) by holding as under:-

“5. By way of filing the present application, applicant-respondent has requested for setting aside ex-parte order dated 08.11.2019 and ex-parte award dated 16.12.2019. A perusal of the case file of reference no.305/19 reveals that on 05.09.2019 lady-worker had filed claim statement U/s 2-A(2) of I.D. Act, 1947 against respondent. Notice was ordered to be issued to the respondent for 08.11.2019. On the said date i.e. 08.11.2019 notice issued to respondent for 08.11.2019. On the said date i.e. 08.11.2019 notice issued to respondent through

*registered post received back with report of “refusal”. Since none had appeared on behalf of respondent despite being called several times, ex-parte proceedings were initiated against the respondent by the learned predecessor of this Court vide order dated 08.11.2019 and case was adjourned for ex-parte evidence. After recording ex-parte evidence, ex-parte arguments were heard and the award was passed in favour of lady-worker on 16.12.2019. Said award was published on 06.01.2020. Present application has been filed by applicant-respondent on 29.01.2021. In case titled as **Haryana Suraj Malting (Supra)**, Hon'ble Supreme Court held that Industrial adjudicator is not functus officio after the award has become enforceable as far as setting aside of an ex-parte award is concerned. Thus in view of the law laid down by Hon'ble Supreme Court of India, it cannot be said that this Court has become functus officio.*

6. Now coming on merits, in the present application, applicant-respondent has taken the plea that Sh. Prabhakar Roy was authorized to receive the documents and submit written statement on behalf of respondent and said Mr. Prabhakar Roy had entered appearance on behalf of respondent before this Court. However he did not appear before the Court on 08.11.2019 and ex-parte proceedings were initiated against the respondent. Said authorized representative did not intimate respondent about the ex-parte order dated 08.11.2019 and next date of adjournment as well as the ex-parte award dated 16.12.2019.

7. However the facts as mentioned by the applicant-respondent, are contrary to the record of reference No.305/2019 which clearly shows that applicant-respondent had never entered its appearance before the Labour Court through its authorized representative namely Sh. Prabhakar Roy. Rather perusal of record shows that respondent had refused to receive the notice sent by the Labour Court and accordingly the ex-parte proceedings were initiated against the respondent. Respondent did not appear before the Labour

Court despite having the knowledge of the reference pending before the Labour Court. The present application has been filed after more than 1½ years of passing of ex-parte order dated 08.11.2019 without any justified reason. Therefore in such facts and circumstances this Court finds no justification for setting aside ex-parte order dated 08.11.2019 and ex-parte award dated 16.12.2019. Accordingly present application is hereby dismissed being devoid of any merit.”

14. Now the present writ petition has been filed, wherein the petitioner-Management has taken a stand that he was never served with the notice, issued by the Tribunal below, and therefore, the impugned award dated 16.12.2019 (Annexure P-14) as well as order dated 23.08.2023 (Annexure P-25) may be set aside.

15. A perusal of the aforementioned facts and circumstances would clearly indicate that the petitioner-Management has taken different stands before the Tribunal below and before this Court.

The petitioner-Management, while filing the application under Order 9 Rule 13 of the Code of Civil Procedure, before the Tribunal below had taken a stand that he had duly engaged a representative, namely Sh. Prabhakar Roy, however, he did not appear before the learned Tribunal on 08.11.2019 and as a result, the petitioner-Management was proceeded against *ex parte* and thereafter, *ex parte* award dated 16.12.2019 (Annexure P-14) came to be passed in favour of respondent No.2 herein; and the petitioner-Management was never informed about the aforesaid proceedings by its authorized representative. It was further the stand of petitioner-Management before the Tribunal below that its authorized representative intentionally and knowingly and also with the collusion of the work-lady had not intimated the proceedings of *ex parte* order dated 08.11.2019 as well as *ex parte* award dated 16.11.2019 (Annexure P-14) to

the Management, and therefore, it cannot suffer the irreparable loss, injury and damages for the collusive intent of its representative. On the other hand, the petitioner-Management has taken a stand before this Court that in fact the Management never received any notice from the Tribunal below and as a result thereof, it was wrongly proceeded against *ex parte*.

Apparently, the petitioner-Management has taken mutually destructive pleas as regards his absence before the Tribunal below, which is untenable in law.

16. In “*Parimal v. Veena @ Bharti*”, 2011(2) RCR (Civil) 155; Hon'ble Apex Court explained the scope of Order 9 Rule 13 of Civil Procedure Code by observing as under: -

“7. Order 9, Rule 13 CPC:

The aforesaid provisions read as under:

"Setting aside decree ex-parte against defendant In any case in which a decree is passed ex-parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

xx xx xx

Provided further that no Court shall set aside a decree passed ex- parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

xx xx xx"

(Emphasis added)

8. *It is evident from the above that an ex-parte decree against a defendant has to be set aside if the party satisfies the Court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court.*

The legislature in its wisdom, made the second proviso, mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.

9. *"Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. (Vide: **Ramlal & Ors. v. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361; Sarpanch, Lonand Grampanchayat v. Ramgiri Gosavi & Anr., AIR 1968 Supreme Court 222; Surinder Singh Sibia v. Vijay Kumar Sood, 1991(2) RCR (Rent) 576 ; and Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation & Another, 2010(2) RCR (Civil)***

284 : 2010(2) R.A.J. 205 : (2010) 5 SCC 459

10. *In Arjun Singh v. Mohindra Kumar & Ors., AIR 1964 Supreme Court 993*, this Court observed that every good cause is a sufficient cause and must offer an explanation for non-appearance. The only difference between a "good cause" and "sufficient cause" is that the requirement of a good cause is complied with on a lesser degree of proof than that of a "sufficient cause". (See also: *Brij Indar Singh v. Lala Kanshi Ram & Ors., AIR 1917 Privy Council 156; Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee & Ors., AIR 1964 Supreme Court 1336; and Mata Din v. A. Narayanan, AIR 1970 Supreme Court 1953.*

11. While deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. (Vide: *State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr., 2000(2) S.C.T. 889 ; Madanlal v. Shyamlal, 2002(2) RCR (Civil) 361 ; Davinder Pal Sehgal & Anr. v. M/s. Partap Steel Rolling Mills (P) Ltd. & Ors., 2002(1) RCR (Civil) 555 ; Ram Nath Sao alias Ram Nath Sao & Ors. v. Gobardhan Sao & Ors., 2002(2) RCR (Civil) 337 ; Kaushalya Devi v. Prem Chand & Anr. (2005) 10 SCC 127; Srei International Finance Ltd., v. Fair growth Financial Services Ltd. & Anr., (2005) 13 SCC 95; and Reena Sadh v. Anjana Enterprises, 2008(3) RCR (Civil) 62 : 2008(2) RCR (Rent) 125 : 2008(3) R.A.J. 290 .*

12. In order to determine the application under Order [9](#), Rule [13](#) Civil Procedure Code, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its

discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application.

PRESUMPTION OF SERVICE BY REGISTERED POST & BURDEN OF PROOF:

13. This Court after considering large number of its earlier judgments in ***Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors., 2010(4) RCR (Civil) 224 : 2010(5) R.A.J. 193***, held that in view of the provisions of Section 114 Illustration (f) of the Evidence Act, 1872 and Section [27](#) of the General Clauses Act, 1897 there is a presumption that the addressee has received the letter sent by registered post. However, the presumption is rebuttable on a consideration of evidence of impeccable character. A similar view has been reiterated by this Court in ***Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, 2011(1) RCR (Criminal) 57 : 2010(6) R.A.J. 419 : JT 2010 (12) SC 287.***

14. In ***Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani, AIR 1989 Supreme Court 1433***, this Court held as under:

"There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service."

(Emphasis added)

15. The provisions of Section [101](#) of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an

allegation before he is entitled to a judgment in his favour. Section [103](#) provides that burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of Section [103](#) amplifies the general rule of Section [101](#) that the burden of proof lies on the person who asserts the affirmative of the facts in issue...”

17. Considering the facts and circumstances of the case in the light of the judicial pronouncement referred above, I am of the considered view that the petitioner-Management has failed to show any sufficient cause for its non-appearance before the Tribunal below. Apparently, the learned Tribunal had proceeded *ex parte* against the petitioner-Management by considering the fact that there was a report of refusal on the registered notice sent to the Management, and thereafter, the *ex parte* award dated 16.12.2019 (Annexure P-14) came to be passed by the learned Tribunal. The petitioner-Management filed an application under Order 9 Rule 13 of the Code of Civil Procedure after a delay of more than one year and three months, wherein also it was stated that the Management had appointed its authorized representative to appear before the Tribunal below, however, the said representative did not appear before the learned Tribunal on the date fixed nor informed the petitioner-Management regarding the subsequent proceedings as well as *ex parte* award dated 16.12.2019 (Annexure P-14). Apparently, the petitioner-Management was very well aware of the proceedings before the Tribunal below, however, petitioner was negligent in prosecuting its case, and therefore, no further indulgence can be given to the petitioner-Management. Further, award dated 16.12.2019 (Annexure P-14) was passed by the Tribunal below upon consideration of the material available on record, i.e. un-rebutted testimony of respondent No.2 and there

being no evidence produced on behalf of the petitioner-Management; therefore, the same cannot be faulted with.

18. In view of facts and circumstances indicated above, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

19. All pending application(s), if any, shall also stand closed.

03.11.2023
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No