

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

(120)**LPA No.2142 of 2023 (O&M)****Date of Decision: 21.12.2023**

M/s Blue Stampings and Forgings Limited

.....Appellant

Versus

Rajiv Mandal and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE AMARJOT BHATTI**

Present: Mr. Sanjay Jain, Advocate, for the appellant.

DEEPAK SIBAL, J.(ORAL)

1. The instant Intra Court Appeal originates from a judgment dated 14.09.2023 whereby a learned Single Judge of this Court dismissed the appellant's writ petition filed by it to challenge therein the order dated 17.01.2023 passed by the Industrial Tribunal-cum-Labour Court-III, Faridabad (for short "the Labour Court") through which order the Labour Court had dismissed the appellant's application for setting aside order of the Labour Court dated 21.03.2017 through which the appellant had been ordered to be proceeded against ex-parte. Through its writ petition the appellant had also sought quashing of the ex-parte final award of the Labour Court dated 10.08.2017 through which the Labour Court had accepted respondent No.1's claim filed by him against the termination of his services by the appellant.

2. On the termination of his services by the appellant, respondent No.1-workman (hereinafter referred to as "the workman") raised an

industrial dispute as per which in the year 2004 he had been appointed by the appellant as a Press Man; later, he was asked by the appellant to perform the duties of a Dori Man; thereafter, he was designated as a Hammer Man and that the workman was rendering satisfactory service, on regular basis, when on 17.02.2015, without any prior notice and in violation of Section 25-F of the Industrial Disputes Act, 1947, the appellant terminated the workman's services.

3. Through the industrial dispute raised by him the workman sought his re-instatement with continuity of service with full back wages.

4. The dispute raised by the workman was referred for adjudication by the Labour Court. The Labour Court issued notice to the appellant which was dispatched to the appellant on 14.02.2017 through registered post. On 21.03.2017 more than 30 days had elapsed from the date of dispatch of the summons sent to the appellant through registered post. They had also not been received back unserved. Therefore, the Labour Court through its order dated 21.03.2017, directed to proceed against the appellant *ex-parte*. Thereafter, in support of his claim, the workman led evidence in the form of examination of witnesses which included himself and two of his co-workers. Since the evidence led by the workman went un rebutted, through its Award dated 10.08.2017, the Labour Court answered the reference in favour of the workman and resultantly held him entitled to re-instatement with continuity of service with 50% back wages to be calculated on his last drawn salary.

5. On 04.01.2018, the appellant filed an application before the Labour Court for setting aside the *ex-parte* proceedings which was dismissed by the Labour Court through its order dated 17.01.2023. Such

dismissal was after the Labour Court concluded that the application filed by the appellant for setting aside of the *ex-parte* award was not supported by an affidavit and that it contained vague and unsubstantiated averments.

6. The appellant then knocked the doors of this Court through filing of a writ petition challenging therein the order of the Labour Court dated 21.03.2017 through which the appellant had been ordered to be proceeded against *ex-parte*. The *ex-parte* award of the Labour Court dated 10.08.2017 as also its order dated 17.01.2023, through which the appellant's application for setting aside of the *ex-parte* proceedings had been rejected by the Labour Court, were also challenged. A learned Single Judge of this Court found no merit in the appellant's petition and resultantly dismissed the same. Hence the instant Intra Court Appeal.

7. Learned counsel for the appellant vehemently contended that the learned Single Judge has committed an error by not considering the fact that the appellant was never found to be avoiding service of the summons issued to it by the Labour Court and that all that the appellant was seeking before the Labour Court as also the learned Single Judge was an opportunity to rebut the workman's claim on its merits which in the interest of justice should have been allowed.

8. We have heard learned counsel for the appellant and with his able assistance have also carefully perused the records.

9. The workman raised an industrial dispute with respect to termination of his services by the appellant. The dispute was referred to be adjudicated upon by the Labour Court. Acting on such reference, on 14.02.2017, the Labour Court issued notice to the appellant. The notice was sent through registered post. Since after 30 days of its dispatch the

notice was not received back unserved, the Labour Court presumed that the appellant had been served. Therefore, through its order dated 21.03.2017 the Labour Court ordered that the appellant be proceeded against *ex-parte*. Thereafter, the workman led his evidence and since the same went unrebutted, it culminated in the passing of the final award dated 10.08.2017 through which the workman's claim was accepted.

10. On 04.01.2018, the appellant filed an application before the Labour Court seeking therein setting aside of the *ex-parte* proceedings leading to the passing of the *ex-parte* award. Admittedly, the appellant's application was not supported by an affidavit. The appellant's application is also found to be vague as it does not contain any details of the person who had allegedly informed the appellant about the passing of the *ex-parte* award. No evidence was also produced from the postal authorities showing that the summons sent to the appellant, through registered post, were actually never served upon the appellant. The appellant also did not dispute that the address of the appellant at which the registered post had been sent to it was incorrect. Thus, the appellant clearly failed to rebut the presumption of service of summons sent to it by registered post.

11. In the light of the afore factual position no error, factual or legal, is found in the presumption of service drawn by the Labour Court as also in the dismissal of the appellant's writ petition by the learned Single Judge especially when such dismissal is after the learned Single Judge has rightly relied upon the law laid down by the Supreme Court in ***Gujarat Electricity Board and Anr. Vs. Atmaram Sungomal Poshani, AIR 1989 Supreme Court 1433, M/s Madan and Co. vs. Wazir Jaivir Chand, 1988***

(2) RCR (Rent) 654 and C. C. Alavi Haji v. Palapetty Mujammed and Anr., 2007(3) RCR (Criminal) 185.

12. Dismissed.
13. No costs.

(DEEPAK SIBAL)
JUDGE

(AMARJOT BHATTI)
JUDGE

21.12.2023
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No