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W.A.No.1192 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**W.A.Nos.1574, 1192, 1584, 1582, 1586, 1587, 1588, 1581, 1577, 1579 &
1585 of 2024 &
CMP.Nos.8662, 10976, 10984, 11001, 11014, 10960, 10973, 10980, 10965,
10957 & 11017 of 2024**

W.P.No.1574 of 2024

The Management of
Hivelm Industries,
A5 & 6 Industrial Estate,
Guindy, Chennai 600 032

.. Appellant

Vs

1. The Presiding Officer,
1st Additional Labour Court,
Chennai.
2. Thiru S.Sadhasivam,
No.P-160, MMDA Colony,
Arumbakkam,
Chennai 600 016.

... Respondents



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Prayer in W.A.No.1574 of 2024: Writ Appeal filed under Clause 15 of the Letters Patent praying to allow the writ appeal filed by the appellant and set aside the common order dated 07.09.2023 passed in W.P.Nos.12903 of 2002 etch batch., and consequently set aside the award of the 1st respondent dated 08.12.2004 in ID.No.53 of 2003.

For Appellants in all Appeals : Mr. Krishna Srinivas, Senior counsel
for Mr. M.R. Dharanichander

For Respondents in all Appeals: R1 - Court
Mr.K.M.Ramesh, Sr.Counsel
for Mr.V.Subramani - R2

COMMON JUDGMENT

(Order of the Court was made by J.NISHA BANU, J.)

These Writ Appeals are preferred by the appellant/Management challenging the order of dismissal dated 07.09.2023 passed in W.P.Nos.12903 of 2002, 14710, 14712, 14713, 14715 and 26884, 26888, 26885, 26890, 26891 and 26892 of 2005 by the learned Single Judge.

2. The learned Single Judge, by the order impugned, while dismissing the writ petitions filed by the appellant/Management, among other things, has



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observed as follows;

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'4. The learned counsel for the Management filed memo before this Court stating that they have no instruction from the management. On verification from the website of the Registrar of Companies, it is inferred that the management company has been dissolved. A copy of the website extract has also been filed before this Court.

5. The said memo is recorded and the award passed by the Labour Court is hereby confirmed. Accordingly, all the writ petitions filed by the management in W.P.Nos.12903 of 2002 & 14710 to 14715 of 2005 are dismissed.....”

Stating so, the learned Single Judge also allowed the writ petitions filed by the workmen in W.P.Nos.26881 to 26892 of 2005 and reinstated the workmen/petitioners therein, with continuity of service along with backwages.

3. Today, when the matters are taken up for hearing, the learned counsel appearing for the appellant submitted that based on the memo filed by the Junior Counsel stating that there was no instructions from his client, the



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learned Single Judge dismissed all the writ petitions filed by the appellant/management and thereby allowed all the writ petitions filed by the workmen/2nd respondent and reinstated them in service along with backwages.

4. He further submitted that inadvertently, the earlier junior counsel of the appellant/management, without bothering to contact the appellant company to find out the correct facts, on an erroneous inference, made his submissions. In fact, due to non-viability of its business, the appellant company closed down its operations under due procedure and subsequently it was merged with M/s.Digvision Electronics Limited and based on the High Court order, appellant company was dissolved and now it was operated under one of the divisions of the company known as M/s.Digvision Electronics Ltd. Despite aware of the above facts, the junior counsel failed to inform the same before the Court and based on the erroneous inference, the learned Single Judge, without going into the merits of the case, dismissed the writ petitions filed by the appellant/management. It is his further submission that especially when the appellant/management company was dissolved, the direction given by the Writ Court to reinstate its employees along with back wages is unenforceable.



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Pleading so, he prayed for allowing of these Writ Appeals by remanding back the matters to the learned Single Judge for fresh consideration.

5. In support of his contentions, he relied on the following judgments of the Hon'ble Apex Court and this Court

(i) AIR 1993 SC 1182 (Tahil Ram Issardas Sadarangani and other Vs. Ramchand Issardas Sadarangani and others);

(ii) AIR 1998 SC 258 (Malkiat Singh and others Vs. Joginder Singh and others);

(iii) AIR 2000 Mad 190 (Vasu Thevar and others Vs. Rukmani Ammal and others)

6. The learned counsel appearing for the 2nd respondent/workmen submitted that the learned Single Judge correctly passed the impugned order based on the memo filed by the counsel appearing for appellant/Management and hence, the same does not warrant interference. Therefore, he prayed for dismissal of these Writ Appeals.



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7. Heard both sides and perused the impugned order and authorities supplied by the learned counsel for the appellant.

8. Perusal of records would go to show that the Writ Court, recording the memo filed by the petitioner's counsel informing that he received no instructions from his client/appellant herein and also based on the copy of website extract showing that the appellant/management company was dissolved, dismissed all the writ petitions filed by the management.

9. Before this Bench, it is the contention of the appellant/management that the junior counsel who appeared on behalf of the appellant/management before the Writ Court, erroneously made his submissions without finding out the correct facts and based on the submissions of the counsel, the Writ Court dismissed their writ petitions without going into the merits of the matter, directing the appellant/management to reinstate the workmen along with backwages. It is also its contention that now the appellant company closed down its business and was merged with one M/s.Digvision Electronics Ltd



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and at present, it has been functioning as one of the divisions of the abovesaid company.

10. In the decision rendered by the Hon'ble Apex Court in the case of ***Tahil Ram Issardas Sadarangani and other Vs. Ramchand Issardas Sadarangani and others reported in AIR 1993 SC 1182***, it was held in para 4 as follows;

' 4. it is not disputed in the present case that on March 15, 1974 when Mr.Adhia, advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view, when Mr.Adia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer.'

11. The Apex Court, also in the case of ***(Malkiat Singh and others Vs. Joginder Singh and others) reported in AIR 1998 SC 258***, in para 7, has held as follows;

'The appellants in their application clearly pleaded that they were neither careless nor negligent and as soon



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as they learnt about the ex-parte decree dated 08.02.1992 and the order dated 18.11.1991, they filed the application to set aside the order and ex-parte decree. A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. They had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued ny notice to the appellants after their counsel had reported no instructions, should ave, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel reported no instructions. The appellants cannot, in the face and circumstances of the case, be said to be at fault and tey should not suffer. In taking this view, we are fortified by a judgment of this Court in Tahil Ram Issardas Sadarangani and Ors.V.Ramchand Issardas Sadarangani and Anr. MANU/SC/0168/1993; AIR1993SC1182, wherein the bench opined:-.....”

12. Further, this Court, in the case ***Vasu Thevar and others Vs. Rukmani Ammal and others*** reported in ***AIR 2000 Mad 190***, in para 15, has held as follows;

'15. In a matter like this, I am of the view that reporting of "no instructions" should not be for the asking and it should be permitted only if the counsel satisfies the judicial conscience of the Court that for the compelling reasons he was posed to plead "no instructions". The Court should first satisfy itself that there is sufficient cause for the counsel to withdraw from the case and on such withdrawal being permitted the Court should order notice to the party whose counsel has reported "no instructions". I am also of the view that it is the duty of the Court whether the matter is unrepresented without



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sufficient cause. If sufficient cause is shown, then it is the duty of the Court to issue notice to the person concerned informing him that his advocate has revoked his vakalath and thereby call upon him to take appropriate steps as necessary for him to defend his case. In my opinion, it is always the duty of a counsel before pleading no instructions to inform the party that for a particular reason he shall not be appearing in the case and may plead no instructions. The confidence deposited by parties in the counsel is most important. A person who is not present in Court pre-supposes that because of engagement of a counsel his interest would be properly looked after. It is the duty of a counsel to inform him before he proceeds to plead no instructions. In our case, when the matter is pending before the lower appellate Court, the counsel for respondents therein reported no instructions. In such a circumstance, it was the duty of the Court to enquire from the counsel concerned as to why and under what circumstances he was pleading no instructions. The Court cannot be a silent spectator to the scene which is staged in the Court. The judicial conscience of the Judge should always be satisfied before he permits a lawyer either to withdraw or to retire from the case. In the instant case, it does not appear from the proceedings that the learned Judge had taken all necessary steps to ensure that the counsel had sufficient reason not to appear for the party who engaged him or to plead no instructions. A party who reposes confidence and relies on counsel is entitled to be under the belief that his interest would be looked after properly by the counsel. A Judge ordinarily should not permit a lawyer to plead no instructions unless the lawyer satisfies the judicial conscience of the Court that for the compelling reasons he was posed to plead no instructions. I have already observed that there is nothing on record to show as to whether the appellants had the notice of hearing of the case on that date. As observed by Their Lordships of the Hon'ble Supreme Court when the counsel withdrew from the case, the interests of justice required, that a fresh notice for actual date of hearing should have been sent to the parties. Such recourse has not been followed by the Court below.



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From the judgments cited supra, it is clear that when a party who is not present in court, is expecting that because of engaging a counsel, his interest would be properly defended, then it is the responsibility of the counsel to inform him before he proceeds to plead no instructions. Simultaneously, it is the duty of the Court to enquire from the counsel concerned under what circumstances he was pleading no instructions.

13. In the case on hand, the main contention of the appellant/management is that the junior counsel who appeared for the appellant / management before the Writ Court, has erroneously made his submissions without finding out the correct facts regarding the functioning of appellant/management company and the learned Single Judge, based on the submissions of the counsel, after recording the memo regarding no instructions, dismissed their writ petitions without going into the merits of the matter. In the stated circumstances, the learned Single Judge, ought to have ordered fresh notice to the appellant company to the correct address of the



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appellant and if the notice found to be returned unserved, he ought to have directed the Registry to print the name of the appellant in the cause list. After printing the petitioner's name in the cause list, he may proceed to dismiss the case for reporting 'no instructions'. Without doing so, the learned Single Judge simply dismissed the writ petitions filed by the Management based on the 'no instructions' report given by the petitioner counsel. Further, there is nothing on record to show that the appellant/management has been previously informed about the date of hearing of the case. In such a view of the matter, We are of the opinion that the order passed by the learned Single Judge is perverse.

14. For the foregoing discussions, We set aside the impugned orders and remand back the matters to Writ Court for adjudicating the matters afresh. The learned Single Judge, shall take the matters for fresh consideration and pass orders on the same on merits and in accordance with law.

15. The Writ Appeals are allowed on the above terms. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.



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Index: yes/no
Internet:yes/no
msr

[J.N.B.,J.] [P.D.B.,J.]
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J. NISHA BANU, J.
&
P. DHANABAL, J.

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