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W.P.No.20149 of 2022 etc..

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 08.03.2024
ORDER PRONOUNCED ON : 15.04.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.Nos.20149, 20153, 20156, 20158, 31135, 31136, 31165, 31167, 31169 and
31171 of 2022
and
WMP.Nos.19373,30569,30599,19378,30569,30595,30600,19367,19375 and
30598 of 2022

The Management,
Maruva Electronics (India) Pvt. Limited,
Rep. by its Manager,
Presently at No.2/56, Second Floor,
Vinayagar Kovil Street, New Colony,
Porur, Chennai-600 116.

...Petitioner in W.P. No.20153 of 2022
Vs.

M.Saravanan,
C/o.Dr.Indiran Nanjil,
President,
Maruva Employees Union,
18/14, Masoothi Thottam,
East Jones Road,
Saidapet, Chennai-600 015.

...Respondent in W.P.No.20153 of 2022

Prayer in W.P.No.20153 of 2022: Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records pertaining to the ex-parte award dated 28.01.2019 in



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I.D.No.81/2013 passed by the II Additional Labour Court, kancheepuram and quash the same.

For Petitioner in all W.P.Nos. :Mr.S.Ravindran, Senior Counsel
for Mr.K.V.Shanmuganathan

For Respondent in all W.P.Nos. : Mr.M.Balasubramanian

COMMON ORDER

W.P.Nos.31135, 31169, 20153, 20158 and 31165 of 2022 are all filed challenging the ex-parte award dated 28.01.2019 passed in I.D.Nos. 79 to 83 of 2013 and W.P.Nos.31136, 31171, 20149, 20156 and 31167 of 2022 are filed challenging the order dated 12.11.2021 passed in I.A.Nos.111 to 115 of 2020 in I.D.Nos.79 to 83 of 2013 respectively.

2. As the issues involved in the writ petitions are one and same they are all disposed by this common order.

3. The facts in brief are that the petitioner is a manufacturer and exporter of Chip Inductors, Multi Layer, Chip Impedor, Multi Layer Ceramic Capacitors, Varistors and Emki Filters. The petitioner unit was



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initially functioning and thereafter it was permanently closed on 28.04.2017. The respondent herein joined the services of the petitioner on 16.10.2006 as an operator. The respondent abruptly left the company on 15.04.2009 and thereafter nothing was heard about the respondent. The respondent however raised the industrial dispute before the Assistant Commissioner of Labour, Conciliation II, Chennai stating that the respondent was not allowed to report for duty from the day following 15.04.2009 on which date he was forced by the manager to give him a letter, as directed by him. As conciliation proceedings failed, respondent raised a dispute under Section 2A(2) of the I.D. Act on 26.12.2012 and the same was registered in I.D.No.81 of 2013. The petitioner was set ex-parte for non appearance of his counsel on 23.03.2015. The petitioner filed I.A.No.272 of 2015 to set aside the ex-parte order and same was allowed on 29.08.2016. Meanwhile the respondent filed proof affidavit and the case was posted for cross-examination of WW.1 on 26.04.2017. Since petitioner's counsel did not appear, the petitioner was once again set ex-parte. The petitioner filed two applications viz., I.A.Nos.137 and 138 of 2017 to set aside the ex-parte award and to recall WW.1. The said petitions were dismissed on 13.07.2018 and thereafter the petitioner filed I.A.No.336 of



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2018 to review the order and the same was allowed on 08.11.2018. As the respondent WW.1 did not appear, at the request of the petitioners authorised representative the case was adjourned to 20.11.2018. Thereafter again it was adjourned at the request of the respondent on 24.12.2018 and 21.01.2019. The counsel for the petitioner did not appear and hence the petitioner was set ex-parte by order dated 25.01.2019. The petitioner thereafter filed I.A. 1 of 2019 to set aside the ex-parte order dated 25.01.2019. In the meantime, the II Additional Labour Court passed Award on 28.01.2019. On 14.06.2019, the application in I.A.No.1 of 2019 to set aside the ex-parte order was also dismissed. The petitioner, in pursuance of the ex-parte award passed on 28.01.2019 filed the application in I.A.No.113 of 2020 to condone the delay of 373 days in seeking to set aside the ex-parte award dated 28.01.2019. The said I.A was dismissed by the Labour Court and hence petitioner has filed the above writ petition challenging the order passed in the I.A.Nos'. 111 to 115 of 2020 and the ex-parte Award in I.D.Nos.79 to 83 of 2013.

4. The admitted facts are that the respondents joined the petitioner company as a operators. The respondents are said to have left the



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petitioner company abruptly on various dates. The respondents raised disputes in I.D.Nos.79 to 83 of 2013 before the Labour Court. On 28.01.2019, ex parte awards were passed in I.D.Nos.79 to 83 of 2013 and therefore the petitioner filed applications in I.A.Nos.111 to 115 of 2020 in I.D.Nos.79 to 83 of 2013 to condone the delay of 373 days in seeking to set aside the ex-parte awards. The Labour Court dismissed the aforesaid I.A's and therefore the petitioner company filed the writ petitions in W.P.Nos. 31135, 31169, 20153, 20158 & 31165 of 2022 and W.P.Nos.31136, 31171, 20149, 20156 and 31167 of 2022 challenging the ex-parte Awards as well as the orders in the I.A's.

5. As the decision in W.P.Nos. 31136,31171,20149,20156 and 31167 of 2022 filed challenging the order dated 12.11.2021 in I.A.Nos.111 to 115 of 2020 will have a bearing on W.P.Nos. 31135,31169,20153,20158 & 31165 of 2022 challenging the ex-parte award in the I.D's. the impugned orders passed in the I.A. are taken up for consideration first.

6. The Labour Court on an appreciation of the entire facts found that there were no justifiable reasons for condoning the enormous delay of 373



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days in seeking to set aside the ex-parte award dated 28.01.2019. It is seen that the Claim Petitions in the I.D.s were filed on 29.02.2013. The claim petitions were filed for reinstatement with continuity of service, backwages and all other benefits.

7. The petitioner entered appearance on 10.07.2013 and filed counter. The case was posted for examination of witness to 28.10.2014. As the respondents did not appear on the said date, the respondents were set ex-parte and the restoration application filed by the respondents were allowed. Thereafter the respondents marked Ex.W1 to Ex.W6 through WW1. The case was adjourned for cross-examination of WW1. As the petitioner did not come forward to cross-examine the witness, the petitioner was set ex-parte on 23.03.2015. Thereafter the petitioner filed I.A.Nos. 270 of 2015 etc. and the same was allowed on 29.08.2016. Thereafter the petitioner was again set ex-parte and against the ex-parte order the petitioner filed two I.A.Nos.133 and 134 of 2017 etc. and the petitioner was asked to cross-examine WW1. The said I.A.Nos.133 and 134 of 2017 etc. were dismissed on 13.07.2018 and challenging the dismissal order the petitioner filed review application in I.A.Nos.334 of 2018 etc. The



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review applications were allowed on 08.11.2018. On 21.01.2019 the petitioners counsel did not appear for cross-examination of the respondents, therefore the petitioner was again set ex-parte and on 28.01.2019 the ex-parte order was passed. The petitioner filed I.A.No.1 of 2019 challenging the ex-parte order dated 28.01.2019. Meanwhile the Labour Court passed ex-parte award on 28.01.2019. Thereafter I.A.No.1 of 2019 was dismissed on 14.06.2019. The petitioner subsequently filed I.A.No's.111 of 2020 etc. to condone the delay of 373 days in seeking to set aside the ex-parte Award dated 28.01.2019. The Labour Court on consideration of the entire facts dismissed the I.A's.111 to 115 of 2020.

8. The learned counsel for the petitioner submitted that the reasoning of the Labour Court that as I.A.No.1 of 2019 was already dismissed on contest and so the present applications were not maintainable was erroneous because the Labour Court failed to note that I.A.No.1 of 2019 was filed challenging the ex-parte order, whereas the application's in I.A's.111 to 115 of 2020 were filed to condone the delay in seeking to set aside the ex-parte Award. It was further submitted by the petitioners counsel that the Labour Court erred in thinking that on the expiry of 30



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days from the date of publication of the Award, the Labour Court became functus officio and therefore the petitions deserved to be dismissed.

9. The learned counsel for the respondents on the other hand submitted that the facts of the case clearly proved that the petitioner was inclined only to drag on the proceedings. The learned counsel for the respondents submitted that the respondent in pursuance of the ex-parte Award filed Claim Petition claiming wages and other monetary benefits and only to delay the proceedings the petitioner filed the condone delay petition to set-aside ex-parte Award. The learned counsel further submitted that the Labour Court on the expiry of 30 days from the date of publication of the Award became functus officio and therefore the Labour Court had no jurisdiction to set aside the ex-parte Award. The counsel therefore prayed for the dismissal of the writ petitions.

10. I have heard the learned counsels and I have perused the records.

11. As far as the legal contention that the Labour Court becomes functus officio on expiry of 30 days from the date of the award under



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Section 17-A of the I.D. Act, the law is no longer *res integra*. The Hon'ble

Supreme Court in the case of *Haryana Suraj Malting Ltd. Versus Phoolchand*

reported in 2018 (3) LLJ page 1 held as follows:

"Labour Court/Tribunal is not functus officio after Award has become enforceable as far as setting aside an ex parte Award is concerned."

12. Therefore the contention of the learned counsel for the respondents that the Labour Court became functus officio after the Award became enforceable and hence it had no power to set aside the ex-parte Award is rejected.

13. Having said that, the next issue to be considered is whether the Labour Court was justified in rejecting the petitioners application for condoning the delay of 373 days in seeking to set aside ex-parte Award. As narrated above, the petitioner was set ex-parte thrice before the Labour Court and therefore it is to be seen if, inspite of the same, the petitioner is entitled to any further indulgence. The claim petition in the I.D was filed in the year 2013 and between 25.06.2015 to 28.01.2019, the petitioner was set ex-parte thrice. From the narration of events in the Labour Court's



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order, it is clear that the petitioner did not cooperate in the trial. At this point it would be relevant to refer to the reasons cited by the petitioner to condone the delay of 373 days in seeking to set aside the ex-parte Award. The petitioner at para '5' of the counter affidavit in I.A.113 of 2020 has stated as follows:

"5. I state that I was informed about the exparte award passed by this Hon'ble Court by the junior counsel who had appeared in the above case only during last week of June 2019 and on my instruction application was made by junior counsel on 26.06.2019 to get the certified copy of the award and the same was obtained on 16.07.2019. However, it was noticed by me that the certified copy of the proof affidavit of the respondent was not available and once again an application was made and the copy was obtained on 06.01.2020. After getting the proof affidavit filed by the respondent and after confirming the date of filing of the claim statement by him before this Hon'ble Court I met my counsel and instructed him to prefer an application before this Hon'ble Court to set aside the exparte award dated 28.01.2019 passed by this Hon'ble Court. In this process there occurred a delay of days in filing the set aside petition. The delay was neither wilful nor wanton but due to the reasons stated above. I am advised to submit that the petitioner management has got fair chances of success in the above I.D. The petitioner will be exposed to severe hardship if the delay is not condoned and the exparte award is not set aside."



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14. It is relevant to note here that in all the I.A.Nos. the very same pleadings find place. From the reading of the aforesaid para, it is clear that though the petitioner received the certified copy of the award on 16.07.2019, he awaited the copy of the proof affidavit of the respondents for which he approached the counsel for filing application and in the process the delay occurred. I do not understand the linkage between the condone delay affidavit and the proof affidavit of the respondent. Why the petitioner had to wait for certified copy of the proof affidavit of the respondent to file the condone delay petition is not explained by the petitioner. It is also pertinent to note here the subsequent developments also.

15. It is seen that the Government of Tamil Nadu published the Award on 12.12.2019. It is also seen that the respondents filed claim petition claiming the backwages due to them under Section 33(C)(2) of the I.D. Act. It was long after the filing of the claim petitions in 2019, that the petitioner woke up from its slumber and filed the petitions in Feb 2020. It is therefore clear that the petitioners intention was only to delay and deny



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the respondents backwages and other benefits. I therefore find no bonafides and no justifiable reasons to interfere with order of the Labour Court. In my view, the Labour Court has exercised its jurisdiction in reasonable and judicious manner and therefore the same does not called for any interference. It is pertinent to note in this context that in the aforesaid Judgment of the Hon'ble Supreme Court reported in 2018 (3) LLJ SC (1) while declaring the law that the Labour Court does not become functus officio on the publication of the Award, the Hon'ble Supreme Court nevertheless held that what is sufficient cause and reasonable time should be left to the judicious discretion of the Labour Court.

16. The learned counsel for the petitioner submitted that the dispute was raised beyond the period of limitation as provided under Section 2A(2) of the I.D. Act. According to the counsel the claim petition ought to have been filed within 3 years of the termination order, but as the claim petition was filed beyond the limitation period, the Labour Court ought to have rejected the claim petition. The learned counsel relied on the Judgments of this Court in support of his case. In my view the said issue relates to the merits of the case and as I have held that the Labour Court



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has rightly rejected the condone delay application, I find no reason to consider the issue.

For all the above reasons writ petitions are dismissed. As the writ petitions in W.P.Nos.31135, 31169, 20153, 20158 and 31165 of 2022 are dismissed, consequently writ petitions in W.P.Nos.31136, 31171, 20149, 20156 and 31167 of 2022 are also dismissed. No costs. Consequently, connected WMPs' are closed.

15.04.2024

dsn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No



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To

1. The II Additional Labour Court,
Kancheepuram.

2.The Management,
Maruva Electronics (India) Pvt. Limited,
Rep. by its Manager,
Presently at No.2/56, Second Floor,
Vinayagar Kovil Street, New Colony,
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N.MALA,J.

dsn

PRE-DELIVERY ORDER IN
W.P.Nos.20149,20153,20156,20158,31135,31136,
31165,31167,31169 and 31171 of 2022

ORDER DELIVERED ON



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