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W.P.Nos.13302 and 13303 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	8/2/2024
Pronounced on	6/3/2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.Nos.13302 and 13303 of 2014

a n d

M.P.Nos.1 and 1 of 2014

The Management

M/s. Sham Fabs

12 KNK Road

Now at H-98 Periyar Nagar

Tamil Nadu Housing Unit

Erode.

...

Petitioner in both the
writ petitions

Vs

1. The Presiding Officer

Labour Court

Salem.

...

First respondent in both
the writ petitions

2. M. Shanmuga Sundaram

...

Second respondent in
W.P.No.13302 of 2014

N. Radhakrishnan

...

Second respondent in



W.P.Nos.13302 and 13303 of 2014

W.P.No.13303 of 2014

Prayer in W.P.No.13302 of 2014: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the entire records relating to the order dated 5/11/2013 in I.A.No.10/2012 in C.P.No.34/2007 on the file of the Labour Court, Salem and quash the same.

Prayer in W.P.No.13303 of 2014: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the entire records relating to the order dated 5/11/2013 in I.A.No.11/2012 in C.P.No.35/2007 on the file of the Labour Court, Salem and quash the same.

For Petitioner ... Mr.D.Shivakumaran

For respondents ... R.1 – Labour Court

Mr.K.V.Shanmuganathan
for R.2

COMMON ORDER

These writ petitions are filed seeking to quash the orders made in I.A.Nos.10 and 11 of 2012 in C.P.Nos.34 and 35 of 2007 on the file of the



the same, present writ petitions are filed.

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4. The second respondent in both the petitions have filed counter affidavits mentioning about the details of filing the Computation Petition and other connected aspects.

5. Heard Mr.D.Shivakumaran, learned counsel for the petitioner and Mr.K.V.Shanmuganathan, learned counsel for the second respondents in both the petitions.

6. The short point that falls for consideration is whether the order passed by the Presiding Officer, Labour Court, Salem in I.A.Nos.10 and 11 of 2012 in C.P.Nos.34 and 35 of 2007 will sustain.

7. The petitioner was set ex parte in C.P.Nos.34 and 35 of 2007 on 12/1/2010. As there was a delay in filing these applications for setting aside, the petitioners has filed I.A.Nos.359 and 360 of 2012 to condone the delay of 160 days. The said applications were allowed and delay was condoned. Once delay is condoned, it is deemed that the applications for setting aside the ex parte order are filed within limitation. Now once applications for



setting aside the ex parte order is well within the time, the question is whether the Presiding Officer has got any discretion to dismiss the applications.

8. In ***S.NEHRU AND ORS Vs. S.SIVASANKAR AND ORS (2015 1 CTC – 267)***, wherein at paragraph No.4, it has been held as follows:-

“It is seen that as against the Defendants, ex parte Decree came to be passed on 6.7.2009. It is also seen that the Defendants sought to set aside the ex parte Decree after a delay of 842 days. Therefore, they have filed the Application in I.A. No. 17954 of 2012 under Section 5 of the Limitation Act seeking to condone the delay of 842 days. At this juncture, it is pertinent to note that the Affidavit, dated 28.11.2011 filed by the Fourth Defendant, is the common Affidavit filed in support of the Application filed under section 5 of the limitation act as well as the Application filed under Order 9, Rule 13, C.P.C. Therefore, it is evident



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that the reasons stated for condoning the delay as well as for setting aside the ex parte Decree, are one and the same in the one Affidavit filed, i.e. dated 28.11.2011. Such contentions made in the said Affi-davit, were accepted by the Trial Court for condoning the delay and such Order of the Trial Court also has been confirmed by this Court in said C.R.P. Therefore, it is evident that the reasons stated by the Defendants in the said Affidavit, dated 28.11.2011, had been accepted by the Trial Court as well as by this Court and when that being the reasons commonly stated for condoning the delay as well as for setting aside the ex parte Decree, it cannot be said that such reasons acceptable for condoning the delay, are not acceptable for setting aside the ex parte Decree. Therefore, I am of the view that the Trial Court has rightly allowed the Application and set aside the ex parte Decree once again by considering those facts and circumstances and material evidence.”



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9. Considering the above, it is clear that whenever applications are filed well within the limitation, ex parte orders normally shall be set aside. On going through the impugned orders passed by the labour Court, it is clear that the labour Court has gone into the merits of these cases and also have gone to the extent of making a comment that the petitioner Management is trying to cheat the second respondents/workmen. At this stage, only question to be considered by labour Court is whether ex parte order can be set aside or not? However, merits of the main Computation Petitions are not expected to be considered. Labour Court has to consider the reasons for not attending the Court on the day when the petitioner was set ex parte. The reasons explained by the petitioner for condoning the delay of 160 days are also the reasons mentioned in these applications for setting aside the ex parte also. Therefore, the labour Court should have allowed both the applications without considering the merits of the main C.P.

10. In view of the above, this is a fit case where orders of the trial Court are totally perverse and therefore, the orders passed by the labour Court in I.A.Nos.359 and 360 of 2012 are required to be intervened and



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accordingly set aside.

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11. In the result, these **writ petitions are allowed** and the orders dated 5/11/2013 passed in I.A.Nos.10 and 11 of 2012 in C.P.Nos.34 and 35 of 2007 are set aside. No costs. Consequently, the connected Miscellaneous Petition are closed.

6/3/2024

mvs.

Index: Yes/No

NCC: Yes/No

To

1. The Presiding Officer
Labour Court
Salem.

Dr.D.NAGARJUN,J

mvs.



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W.P.Nos.13302 and 13303 of 2014

Pre-delivery common order made in
W.P.Nos.13302 and 13303 of 2014

6/3/2024