



WA.No.3021 of 2024 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN
AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

**WA.Nos.3021, 3022, 3024, 3025 3026, 3043, 3044, 3045,
3046 and 3047 of 2024**

and

**CMP.Nos., 22667, 22672, 22681, 22684, 22686, 23015,
23017, 23022, 23024 & 23079 of 2024**

WA.No.3021 of 2024

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.

... Appellant

-Vs-

V.Sivaraj

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 15.04.2024 passed in WP.No.31136 of 2022 and consequently set aside the order of the Labour Court, Kancheepuram dated 12.11.2021 passed in IA.No.111 of 2020 in ID.No.79 of 2013.

For Appellant : Mr.S.Ravindran

For Respondent : Mr.M.Balasubramanian

COMMON JUDGMENT



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WEB COPY [Judgement of the Court was made by **R.SUBRAMANIAN, J**]

The Management is on appeal aggrieved by the order of the Writ Court dismissing the writ petitions. The writ petitions arose on the following factual background.

(a) An Industrial Dispute was raised by the Union in ID.No.81 of 2012 seeking reinstatement with continuity of service and for back wages in respect of 5 employees of the appellant. In the said Industrial Dispute, the Management was set *ex parte* on 21.01.2019 and an *ex parte* award came to be passed on 28.01.2019. Between 21.01.2019 and 28.01.2019 i.e., on 25.01.2019, an application in I.A.No.1 of 2019 was filed by the employer seeking to set aside the *ex parte* order dated 21.01.2019. The said application was returned for curing certain defects on 28.01.2019. On the same day i.e., 28.01.2019, an *ex parte* award came to be passed. While re-presenting I.A.No.1 of 2019 on 29.01.2019, the date of the *ex parte* order was corrected as 28.01.2019 instead of 21.01.2019. The Labour Court treated the application in I.A.No.1 of 2019 as an application to set aside the *ex parte* award and dismissed the same by order dated



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14.06.2019. Thereafter, the Management filed I.A.No.113 of 2020 seeking condonation of delay and seeking to set aside the *ex parte* award dated 28.01.2019. The delay was for a period of 373 days. The Labour Court concluded that the delay has not been properly explained and it also found that I.A.No.1 of 2019 having been dismissed the present application seeking condonation of delay in filing an application to set aside the award dated 28.01.2019 cannot be entertained. Challenging these two orders viz., *ex parte* award dated 28.01.2019 and the order in I.A.No.113 of 2020 dated 12.11.2021, ten writ petitions were filed in various industrial disputes.

(b) Before the Writ Court, it was the contention of the workmen that the award has been published under Section 17(2) and therefore, it cannot be set aside and the Labour Court has become *functus officio*. The said argument has been rejected by the Writ Court, after referring to the judgment of the Hon'ble Supreme Court in ***Haryana Suraj Malting Ltd., Vs. Phoolchand*** reported in **2018 (3) LLJ 1**. The Writ Court however considered the writ petitions that were filed against the order passed in applications filed under Section 5 in each of the Industrial



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Disputes and concluded that there are no proper reasons given for condonation of delay and on the said findings, the writ petitions filed against the order in applications seeking condonation delay were dismissed.

(c) The learned Single Judge also dismissed the writ petitions challenging the award without going into the merits on the conclusion that once the writ petitions challenging the order in Interlocutory application is dismissed, the challenge to the award cannot survive. This order had led to the above 10 writ appeals.

2. We have heard Mr.S.Ravindran, learned Senior Counsel appearing on behalf of the appellant and Mr.M.Balasubramanian, learned counsel appearing for the respondents/workmen.

3. Mr.S.Ravindran, learned Senior Counsel appearing for the appellants would contend that the dismissal of the applications seeking condonation of delay in setting aside the *ex parte* award relying upon the dismissal on I.A.No.1 of 2019 viz., the application to set aside the *ex parte* orders is not proper. He would further point out that the Writ Court ought to have



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considered the challenge to the award independently, since it was open to the Management to challenge even an *ex parte* award. In the absence of any consideration dismissal of the writ petition challenging the award cannot be sustained.

4. Contending contra, Mr.M.Balasubramanian, learned counsel for the respondents-workmen would submit that once I.A.No.1 of 2019 has been dismissed, it was not open to the Management to challenge the *ex parte* award, particularly, after the award has been published in the Gazette in view of Section 17(2) (2) of the Industrial Disputes Act, 1947. The learned counsel would submit that the judgment of the Hon'ble Supreme Court in ***Haryana Suraj Malting Ltd.*** [cited supra] will not apply to the facts of the present case. The learned counsel would also further contend that the application for condonation of delay was dismissed not only on the ground that I.A.No.1 of 2019 had already been dismissed, but also on the ground that the delay has not been properly explained.

5. We have considered the rival submissions.

6. Since there was some doubt about the date of filing on I.A.No.1 of 2019 in all these cases, we have summoned the records. The record shows that the Interlocutory Applications seeking to set aside the *ex parte* orders were



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filed on 25.01.2019 itself i.e., even before the *ex parte* award came to be passed. However, while re-presenting the applications, a mistake had occurred where the date of the order was given as 28.01.2019 instead of 21.01.2019. The Labour Court had dismissed the Interlocutory Applications to set aside the *ex parte* order on 14.06.2019. Thereafter, the applications were filed to condone the delay in seeking to set aside the *ex parte* award. Those applications were dismissed by the Labour Court on the ground that the applications to set aside the *ex parte* order have been already dismissed.

7. The first mistake had happened, when the applications to set aside the *ex parte* orders were treated as applications to set aside the *ex parte* awards and they were dismissed on 14.06.2019. Of course, we cannot blame the Labour Court for having treated those applications as once seeking to set aside the *ex parte* awards, as the date of order was given as 28.01.2019 instead of 21.01.2019. But, the entire affidavit proceeds on the footing that it is an application to set aside the *ex parte* order dated 21.01.2019 and not the *ex parte* award dated 28.01.2019.

8. The second error crept in before the Writ Court wherein the Writ Court dismissed the writ petitions challenging the award as a consequence to the dismissal of the writ petitions challenging the order in the condone delay petitions. The award is not a consequence of the order made dismissing the



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condone delay petitions.
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9. It is settled law that a litigant can challenge the *ex parte* decree or award even if the attempt to have it set aside fails. Therefore, the challenge to the awards should have been considered independently. The absence of consideration of the writ petitions challenging the awards independently would render the order of the Writ Court liable for interference. We therefore, find that the orders passed dismissing WP.Nos.31136, 31171, 20149, 20156 and 31167 of 2022 will have to be necessarily set aside and they are accordingly set aside. However, we do not propose to remit the matter, since it is stated that the Company is no longer functioning, it exists only on paper and there is only one person, who is working in the Company and that person is also there only to perform the statutory obligations till a formal closure is made. The Company has already deposited the following amounts to the credit of each of the Industrial Disputes:-



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S.No.	I.D.No.	Amount Deposited
1.	I.D.No.79 of 2013	Rs.5,04,390/-
2.	I.D.No.80 of 2013	Rs.5,38,551/-
3.	I.D.No.81 of 2013	Rs.5,77,677/-
4.	I.D.No.82 of 2013	Rs.5,47,757/-
5.	I.D.No.83 of 2013	Rs.5,38,551/-

10. The workmen have submitted separate calculations, where they would claim salary till date as well as Gratuity and other amounts and the claim of the workmen in each of the cases is as follows:-

S.No.	I.D.No.	Details of Gratuity
1.	I.D.No.79 of 2013	Rs.8,95,135/-
2.	I.D.No.80 of 2013	Rs.8,97,891/-
3.	I.D.No.81 of 2013	Rs.9,39,318/-
4.	I.D.No.82 of 2013	Rs.9,07,080/-
5.	I.D.No.83 of 2013	Rs.8,97,891/-

11. The difference is somewhere around Rs.3.00 lakhs. It is stated that the amount that was deposited by the Management has been kept in interest earning deposit. The amount would have earned some interest. We are therefore of the opinion that the workmen should be compensated instead of actual reinstatement. Taking into account the claim of the Management as well as the workmen, we fix the compensation payable to each of the workmen at Rs.6,50,000/- [Rupees Six lakhs and fifty thousand only]. The Management



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shall deposit the balance amount, after deducting the amount already deposited and the interest that had accrued thereupon to make up the total sum of Rs.6,50,000/- [Rupees Six lakhs and fifty thousand only] to the credit of individual Industrial Dispute raised by the workmen. On such deposit, the Labour Court will pay out the compensation to the workmen. This payment as above will be in full and final settlement to all claims of the employees. Upon payment, the claim petitions, which are pending before the Labour Court will stand dismissed. The balance amount shall be paid, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. All these Writ Appeals are disposed of with the above directions. No costs. Consequently, connected CMPs are also closed.

[R.S.M., J] [C.K., J]
28.11.2024

Index : No

Internet: Yes

Speaking Order

NCC : No

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R.SUBRAMANIAN, J
and
C.KUMARAPPAN, J

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To
The Presiding Officer,
Labour Court,
Kancheepuram.

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