

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

109

CWP-6529-2024

Date of decision: 19.03.2024

M/S REX SEWING MACHINE COMPANY LIMITED LUDHIANA

.....Petitioner

VERSUS

**DISTRICT LEVEL MICRO AND SMALL ENTERPRISES
FACILITATION COUNCIL SANGRUR AND ANOTHER**

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Sahir Singh Virk, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer made in the present writ petition is for seeking quashing/ setting aside of the impugned order/Award dated 20.04.2023 whereby the District Level Micro & Small Facilitation Council, Sangrur has passed an award against the petitioner herein.

2. Counsel for the petitioner contends that the respondent had submitted an application under the Micro, Small and Medium Enterprises Development Act, 2006 (for short “the MSMED Act, 2006) for recovery of the alleged dues. As per the mandate of the Micro Small and Medium Enterprises Act, 2006, a conciliation proceeding is to be initiated under Section 18 (2) of the MSMED Act, 2006 before taking recourse to an arbitration of the dispute. Notice of conciliation/settlement dated 12.04.2023 was sent to the petitioner and

it was called upon to submit its reply on the next date i.e. 13.04.2023 itself. The said notice had apparently not even being delivered to the petitioner and that on the very next day i.e. 13.04.2023, the respondents passed the award. He contends that the petitioner had not even receipt a copy of the complaint and technically no proceedings of arbitration had been initiated by the respondent-Facilitation Council.

3. He makes a reference to Para 6 wherein it was recorded that a notice was sent to the petitioner on 10.11.2022 alongwith the complaint to submit their reply and to appear in person or through the counsel. Such notice was received back undelivered. It is further recorded that notice of appearance for the meeting was sent through WhatsApp which was delivered and seen by the respondent (petitioner herein) and as such, finding was recorded by the Facilitation Council that the petitioner had knowingly chosen not to accept the notice or attend the meetings or to submit any formal reply. It is also recorded in the said award that several opportunities to contest the claim were given to the petitioner and he chose not to appear before the Council whereupon an ex-parte proceeding was initiated and evidence was recorded.

4. Even though, the counsel contends that the dates of the alleged conciliation have not been mentioned, however, he has not led any evidence or brought forth any document even alongwith the present writ petition to show that the said proceedings were not known to him. As a matter of fact, a specific finding has been recorded by the Facilitation Council that the notice was sent on the WhatsApp message which was seen by the petitioner.

5. In the present writ petition, the petitioner does not controvert the said finding of the message having been seen by him recorded in the award. There is no satisfactory explanation put forth by the petitioner as to why he chose not to contest or appear before the Facilitation Council despite having been informed about the case through WhatsApp message.

6. Conveniently, the counsel has chosen not to refer to the said proceedings and to the notice of 10.11.2023 and has referred only to the notice of 12.04.2023 which such effort on the part of the petitioner is clearly an attempt to mislead the Court about a fact which was apparently incorrect and so known to the petitioner as well. A selective reference has been made only to the communication dated 12.04.2023 which apparently is a notice to continuation of the proceedings under Section 18 (3) of the MSMED Act, 2006.

7. There is no explanation as to why the petitioner chose not to ensure entering of appearance.

8. Another glaring aspect which is noticeable is that even though the the petitioner claims that he did not have proper knowledge of the proceedings, however, the award is stated to have been passed on 20.04.2023, surprisingly, the petitioner sent an e-mail on the same day when an award is passed. The above said conduct of the petitioner clearly shows that he was watching the proceedings and it is not that the petitioner was not aware of the proceedings before the Facilitation Council.

9. The timelines which have been noticed above clearly show that the entire sequence is being sought to be manipulated by the

petitioner to portray a different picture whereas he was apparently a fence sitter. His conduct in not participating in the conciliation or the arbitration proceedings was apparently intended to delay the proceedings before the Facilitation Council and to defeat the object of the Micro, Small and Medium Enterprises Development Act, 2006.

10. Besides, the provisions of the MSMED Act, 2006 prescribe a statutory remedy of appeal. No reasons have been set forth or a *prima facie* made out as to why this Court should entertain a writ petition against an award passed by the Facilitation Council especially when the petitioner has an efficacious remedy of appeal and he can agitate all his pleas before the Appellate Forum.

11. The petitioner has mentioned in Para No. 17 of this petition that he has no other effective or speedy remedy under appeal or revision except to approach this Court which such assertion on an affidavit is factually incorrect and runs contrary to the MSMED Act, 2006 which specifically provides for a remedy of appeal. A mis-declaration has also been made by the petitioner in this regard by an improper declaration which is not in conformity with the High Court Rules & Orders. Hence, there is an efficacious alternative remedy available to the petitioner under Section 19 of the MSMED Act, 2006.

12. The Hon'ble Supreme Court laid down certain principles in relation to exercise of jurisdiction under Article 226 of the Constitution of India in the matter of “***Radha Krishan Industries versus State of Himachal Pradesh and others***” reported as (2021) 6 SCC 771, which are extracted as under:-

24. The High Court has dealt with the maintainability of the petition under Article 226 of the

Constitution. Relying on the decision of this Court in Assistant Commissioner (CT) LTU, Kakinada and others v Glaxo Smith Kline Consumer Health Care Limited AIR 2020 SC 2819 [LQ/SC/2020/477] , the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this rule of alternate remedy include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the rule of alternate remedy and its judicial exposition. In Whirlpool Corporation v Registrar of Trademarks, Mumbai (1998) 8 SCC 1 (Whirlpool), a two judge Bench of this Court after reviewing the case law on this point, noted:

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for any other purpose.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not

normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

(emphasis supplied)

26. *Following the dictum of this Court in Whirlpool (supra), in Harbanslal Sahnia v Indian Oil Corpn. Ltd. (2003) 2 SCC 107, [LQ/SC/2002/1378] this court noted that*

7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] [LQ/SC/1998/1044] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration

proceedings.

(emphasis supplied)

27. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged; (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Seth Chand Ratan v Pandit Durga Prasad (2003) 5 SCC 399, [LQ/SC/2003/410] Babubhai Muljibhai Patel v Nandlal Khodidas Barot (1974) 2 SCC 706 [LQ/SC/1974/280] and Rajasthan SEB v. Union of India, (2008) 5 SCC 632 [LQ/SC/2008/1114] among other decisions.

13. Hence, even though there is no absolute bar to entertain a writ petition despite an alternative remedy but a litigant is required to ordinary approach the High Court only after exhausting his statutory remedies. There are no compelling reasons or extra-ordinary circumstances as to why this Court should directly entertain the writ petition when the petitioner opted to not take effective steps to protect its own rights and preferred to be a fence sitter. There is no bar against the appellate authorities to examine all issues which go to root of a case.

14. The submissions on merit and/or legality to the proceedings undertaken by the Facilitation Council can always be raised before the Appellate Forum.

15. Since, there is no exceptional circumstance made out under which the statutory remedy of appeal prescribed under the statute, should be bye-passed, I am not inclined to entertain this writ petition at this stage. The merits of the claims are hence not being commented upon as it may prejudice the respective rights. The observation recorded above are intended for examination of this writ petition only and should have no bearing with the statutory authority which shall consider the matter unfazed by the expression recorded above.

16. The writ petition is accordingly dismissed at this stage with liberty to the petitioner to pursue his alternative remedies in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 19, 2024
Vishal sharma

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