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

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Decided on : 08.02.2024

Jivan Lal

. . . Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court-III, Faridabad and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Ms. Abha Rathore, Advocate
for the petitioner(s).

Mr. Vipul Joshi, Advocate
for respondent No.2.

Mr. Anil Shukla, Advocate
for respondent No.3.

SANJAY VASHISTH, J. (Oral)

1. By way of present writ petition, petitioner – workman has challenged the order dated 12.09.2022 (Annexure P-5), passed by the learned Industrial Tribunal-cum-Labour Court-III, Faridabad (for brevity, ‘learned Tribunal’), whereby, prayer for leading additional evidence has been declined by dismissing the application.

2. As per the claim statement, petitioner – workman, was working with respondent No.2 - M/s Andrits Hydro Pvt. Ltd., 49/5, Mathura Road Prithala, Palwal, Distt. Palwal, as operator since the year 2005, upto March, 2018. After some time, his name was transferred to the roll of contractor namely; M/s Trishul Industrial Services, and his name was further transferred on the roll of another contractor namely; M/s Trident Industrial Solutions (respondent No.3 herein). Services of the petitioner were

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terminated w.e.f. 17.03.2018. Thus, petitioner worked with respondent No.2 for a period of more than 13 years.

Petitioner served a demand notice and accordingly, Reference No.520/2013, under Sections 10(1)(C) of the Industrial Disputes Act, 1947 (in short, 'ID Act'), was forwarded before the learned Tribunal, for adjudication.

During the course of proceedings, some part of the evidence was led by the petitioner – workman, and thereafter, on 17.08.2022, evidence of the respondent – Management was completed.

3. Counsel for the petitioner – workman submits that during the proceedings before the learned Tribunal, petitioner – workman, acknowledged some of the documents, copies of which were recovered. On 17.08.2022 itself i.e. the day of the closing of the evidence of the respondent – Management, petitioner – workman immediately moved an application (Annexure P-3) for leading additional evidence. Relevant part of the above said application is reproduced hereunder:-

“Jeewan Lal Versus Andritz Hydro Pvt. Ltd.

Case No.R-520/2018

Application for additional evidence

R/Sir,

The applicant/workman submits as under:0

- 1. That the above noted case is pending before this Hon'ble Court and is fixed for today.*
- 2. That the applicant/workman has worked with the management of respondent No.1 company as Operator since 1st June 2005 to March 2018 under the control and supervision of Satish Kumar Gaur son of Late Shri Hari Singh Gaur, Resident of House No.S-429, Near Vaternity Hospital, Village Saran, Distt. Faridabad. The above said Satish Kumar Gaur*

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also appointed the applicant/workman in the respondent No.1 company in U.M.1 Machine for machine shop.

3. That the above said witness is very much necessary for the just and proper decision of the present case.

4. That no prejudice would be respondent No.1 in case the above said witness is allowed to permitted.

It is, therefore, prayed that application may kindly be accepted and the applicant/workman may kindly be permitted to examine the witness namely Satish Kumar Gaur as additional witness, in the interest of justice.”

4. As per the application, it was submitted that he worked under the control and supervision of one Mr. Satish Kumar Gaur s/o late Sh. Hari Singh Gaur, r/o S-429, Near Vaternity Hospital, Village Saran, Distt. Faridabad. Reply to the said application was filed by the respondent – Management. The relevant part of the same is as under:-

“Reply to the application dated nil filed on 17/8/22 by AR of Mr. Jeewan Lal (petitioner) for additional evidence and for summoning Mr. Satish Kumar Gaur S/o Mr. late Hari Singh.

1- That above matter is pending before your Honor and is fixed on 9/9/2022 for reply on application filed by the AR of the petition on dated 17/8/22.

2- That the present application is filed after through and is not maintainable in the eyes of law and liable to be dismissed with cost.

3- That present dispute is pending before your Honor for management evidence on 17/8/22.

4- That the respondent management No.1 has closed their evidence on 17/8/22 by recording a statement before Hon’ble Court.

5- That the AR of petitioner has closed their evidence on 30/03/2021 by recording a statement before Hon’ble Court.

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- 6- *That AR of the respondent management No.2 has closed their evidence on 28/8/21 by recording their statement.*
- 7- *That this is no stage to file such applications after a gap of **seventeen months** from the date when the AR of the workman has closed their evidence on 30/03/21.*
- 8- *That the present application has been filed by the AR of the workman when the evidence of both the respondent management has been closed as well as the AR of the workman has also closed their evidence.*
- 9- *That the present application has been filed after through and to waste the valuable time of the Hon'ble Court.*

It is prayed that the above application is not maintainable in the eyes of law at this stage when the both the parties have closed their evidences and Hon'ble Court is requested to dismiss the present application with a reasonable cost.”

5. The basic ground for dismissal of the application, as taken by the respondent – Management, was that the application had been filed after a gap of 17 months from the date when the evidence of the workman was closed on 30.03.2021. Thus, there should not be any reason for allowing the prayer for leading the additional evidence, as the application is being moved at a belated stage.

6. Learned Tribunal noticed that issues were framed on 16.10.2019. After giving of six effective opportunities, on 30.03.2021, evidence of the workman was closed. Thereafter, respondents – Management have also led their evidence. Respondent No.3 closed its evidence on 08.12.2021, and respondent No.2 closed its evidence on 17.08.2021. Immediately, on the same date i.e. on 17.08.2022, application for additional evidence has been moved.

The prime reason of moving the application for additional evidence before the learned Tribunal is that, there is a person namely; Satish Kumar Gaur, who had control and supervision over services of the petitioner. In fact, said Satish Kumar Gaur, got him appointed with respondent No.2.

In support of his application, some of the documents were also placed by the applicant-petitioner to justify the pleadings taken by him i.e. an application for job submitted by the workman on 11.12.2019 to HR Manager, explaining therein that he has done ITI course, apprenticeship and CTI in Mechanistic trade. Application was forwarded by said Mr. S.K. Gaur. Application marked as Mark 'A'.

Counsel also refers to the document Mark 'C', which is shift notice for the period w.e.f. 10.10.2005 to 22.10.2005, wherein, name of the petitioner – workman is mentioned at Sr. No.35, as a member of Shift 'A' and workstation is 'UM'. Said document bears the signatures of Satish Kumar Gaur along with date i.e. 07.10.2005.

Besides, document Mark 'D' is also a shift notice for the period w.e.f. 24.10.2005 to 05.11.2005, wherein, name of the petitioner – workman is mentioned at Sr. No.35 in the column of shift 'C' and workstation as 'UM' from 8:00 pm to 7:30 am. Said document also bears the signatures of said Satish Kumar Gaur along with date i.e. 21.10.2005.

Further, document Mark 'J', is a slip/bill (MRV – Consumables) of 'Andritz Hydro' (respondent No.2 herein) bearing date 04.07.2013, and signatures of Satish Kumar Gaur and Jivan Lal – workman.

7. While referring to the said document i.e. Mark 'A' to Mark 'J', counsel submits that it makes the picture clear that the petitioner has been

working with respondent No.2 i.e. M/s Andritz Hydro Pvt. Ltd., and thus, testimony of said Satish Kumar Gaur is a crucial piece of evidence to be led before the Court, for the just decision of the case.

8. While addressing these arguments, counsel for the petitioner – workman, submits that it is obligatory over the adjudicating authority to consider the aspect that a poor labourer, like the petitioner – workman in the present case, has come across certain documents, which will be helpful in proving the stand taken by him in the claim statement. Here is a workman, who is fighting for his rights *qua* survival against a powerful employer i.e. Management.

9. On the other hand, respondents raises a serious objection in entertaining the prayer of the petitioner – workman and submits that at such a belated stage, allowing of prayer of additional evidence may prejudice rights of the Management, because, already sufficient proceedings have taken place and parties have led their respective evidences.

10. I have gone through the pleadings and the documents appended with the writ petition, and also heard the parties at length.

11. Cardinal principle of granting liberty to lead evidence is to substantiate the stand already taken in the pleadings i.e. the claim statement.

12. This Court in the case of **Joginder Singh and others v. Smt. Manjir Kaur; 2000 (2) RCR (Civil) 382**, observed as under:-

“3. Should such discretion by the Court can ever be termed as "uncontrolled and un-guided exercise of judicial discretion by the Court? "I have no hesitation in answering the above question in the negative. Certainly, it is not possible for the Court to provide the panacea to all problems arising at different stages of the suit. The Code of Civil Procedure is a comprehensive code and the different stages of a suit are controlled and regulated by various checks and limitations provided in the Code. The pious wish of the legislation for expeditious disposal of the suit runs like a golden thread in

the various provisions of the Code. The inherent powers vested in the Court under section 151 of the C.P.C. are of very wide magnitude, but are certainly controlled by self restraints and restrict exercise of such powers depending on merit of each case. The Court is under an implied obligation to balance the equities between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code. The equities would demand that power under the provisions of the Code or the inherent powers should be exercised by the Court to correct imbalances or inequities resulting from unnecessary adjournments, between the parties. As a result of fault of one party to the suit, the other is certainly put to inconvenience or unnecessary harassment. Delay in conclusion, of "proceedings again is a factor of vital importance, as such, uncontrolled opportunity to a party to conclude its evidence in any number of opportunities would certainly prejudice the interest of the other party to the suit, who is exposed to prolong litigation and expense. Thus, there has to be a stage when the Court must decline to grant further opportunity to the defaulting party to conclude its evidence."

Besides, similar view has been taken by this Court in **Kaila Devi and others vs. State of Haryana** in **C.M. No. 2726-CI of 1993 in RFA No. 459 of 1988**, decided on **17.12.1998**, which is as under:-

"Inherent powers cannot be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy, if specifically provided in other provisions of the Code. No code or law could be codified so as to provide for each and every situation, at every stage of the proceedings arising from the vacuum left in the enactment. Such situations are to be supplied by the Court by recourse to inherent powers to create a bridge over such situation for meeting the ends of justice or prevent abuse of process of law. To do justice is the primary duty of the Court but duty imposed should be discharged in consonance with the provisions of the Code and within four corners of well enunciated principle, inherent powers being adjunct to the specifically provided powers of the Code as codified in the code. Thus they could not be used for disturbing the procedure provided under the Code because its ramification could prove retrograde to the administration of justice by Civil Court. Entertainment of such application would have the effect of infringing the concept of finality non-doctrine of civil jurisprudence."

11. As per provisions of Orders 16 and 18 of CPC, the intention of Legislature is to fairly conclude the evidence of the parties without unreasonably compromising the expeditious disposal of the suit. The Court may grant further time to the party to commence the evidence. In case of default, the Legislature has given specific

powers to the Court under Order 17 Rule 3 of the Code for disposal of the suit or to proceed with the suit as the Court may deem fit and proper. These powers vested in the Court cannot be rendered ineffective or meaningless by granting indefinite adjournments for leading evidence by a party. Such approach is bound to decimate the very purpose of the Code i.e. to achieve the ends of justice and deliver expeditious decision in the cases. Accordingly, such provisions can neither be rendered ineffective nor taken to nadir so as to render provisions of Code as trivial.

12. The procedural law is enacted with the object of doing substantial justice between the parties. Its purpose is to determine the dispute between the parties and provide finality to such determination. The intention is also to prevent multiplicity or frivolous litigation to achieve the object of the golden thread underlying the entire procedure prescribed under the Code. However, it is for the Court to determine, while exercising its discretion uniformly, by creating balance between the parties but such discretion is to be controlled by settled preposition of law keeping in view the facts and circumstances of each case.

*13. Similar observation has been made by Hon'ble the Apex Court in case **State of Punjab and another vs. Shamlal Murari and another**, 1976 AIR (Supreme Court) 1177.”*

13. Considering the very object of the legislation that no one should be deprived of adequate liberty for the purpose of raising pleading or to lead evidence in support thereof, and being strengthened with the judgments cited herein-above, I find that evidence proposed to be led by the petitioner – workman, may prove to be a clinching and substantial one. Merely for the reason that it may amount to the granting of an opportunity at belated stage, or to fill up the lacuna, or such allowing of the prayer, may cause delay in completion of the judicial proceedings before the learned Tribunal, Courts are not expected to scuttle down the reasonable rights of any of the litigants, approaching to the Court with the hope of justice, *qua* the grievances

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expressed by him/her before it, under the law.

14. Therefore, in view of above, the impugned order dated 12.09.2022 (P-5) is set-aside.

Accordingly, learned Tribunal is directed to afford three effective opportunities to the petitioner – workman for leading evidence, which he proposes to lead as additional evidence. For the purpose of granting three effective opportunities, maximum period of six weeks would be consumed from the date of receipt of certified copy of this order.

15. At this stage, Court is informed that an application for reviewing of the impugned order had also been dismissed by the learned Tribunal. If so, said order would have no bearing or any meaning, once the present impugned order itself has been set-aside.

Considering the aspect that the petitioner – workman is an operator of the machine/mechanic, no cost is being imposed.

With the above terms, **petition stands disposed of.**

(SANJAY VASHISTH)
JUDGE

February 08, 2024

J.Ram

Whether speaking/reasoned: ✓ *Yes/No*

Whether Reportable: ✓ *Yes/No*