

11.08.2025  
Ct. No. 30  
S.L. No. 18  
Aloke

**WPA 20095 of 2015**  
**M/s. Kishore Motor Stores**  
**Vs.**  
**State of West Bengal & Ors.**

Mr. Lakshman Chandra Halder  
.....for the petitioner

1. The writ petition of the year 2015 has been preferred praying for setting aside of the ex parte award dated 25.02.2013 in case No. 24/2A(2) of 2012. In the present case only the fact that the award being passed ex parte has been challenged.

2. The petitioner has filed the written notes and has relied upon the judgment of the Hon'ble Supreme Court in the case of **Grindlays Bank Limited vs. Central Government Industrial Tribunal & Ors.** passed in **C.A. No. 2355 of 1979** dated 12<sup>th</sup> December, 1980 wherein the Court held as follows :

*"14. The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of S. 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under S. 17A. Under S. 17A of the Act, an award becomes*

*enforceable on expiry of 30 days from the date of its publication under S. 17. The proceedings with regard to a reference under S. 10 of the Act is therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to, for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under S. 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent NO. 3, acting on behalf of respondents Nos. 5 to 17 on January 19, 1977, i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed; the Tribunal had in any event become functus officio we cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal*

*with an application properly made before it for setting aside the ex parte award and pass suitable orders....”.*

3. It is submitted by the learned counsel for the petitioner that in view of the said judgment of the Supreme Court, the Tribunal was duty bound to issue a fresh notice upon the petitioner prior to passing an ex parte award.

4. Admittedly, notice in the case before the Tribunal was issued. The petitioner as the O.P./company also put in appearance before the Tribunal.

5. It is submitted by the learned counsel for the petitioner that though they initially received notice from the Trial Court and a learned advocate was also making an appearance, subsequently, as the learned advocate failed to appear the Court decided the case ex parte.

6. It is submitted that as such the petitioner has been severely prejudiced as he could not pray for setting aside of the ex parte award before the Tribunal as 30 days had already expired.

7. Now, the petitioner has prayed for setting aside of the ex parte award by way of a writ application after almost 2 years of passing of the ex parte award.

8. The records of the Tribunal called for by this Court was received, considering the submissions of the petitioner.

9. On perusal of the said records it appears that the petitioner/company herein appeared before the tribunal on 21.06.2012 and on failing to appear before the Court on 08.08.2012, the Court fixed the case for ex parte hearing on 19.09.2012. On 19.09.2012 the company was absent and no vakalatnama or written statement was filed on behalf of the company in spite of undertaking by the learned lawyer and the matter was again fixed on 11.10.2012 for ex parte hearing.

10. The company appeared on the said date, that is on 11.10.2012 and prayed for vacating the order of ex parte hearing. The Court in the interest of justice, set aside the order of ex parte hearing and vakalatnama was accepted by the Court. The company was also granted liberty to file written statement along with list of documents.

11. But again the company failed to appear before the Court on the next date. On 19.12.2012 the case was again fixed for ex parte hearing. The O.P./company again appeared before the Court on 19.12.2012 and prayed for vacating the order of ex parte hearing.

12. As the applicant did not raise any objection, the **order for ex parte hearing was vacated for the**

**second time**, on 03.01.2013 when the O.P./company again prayed for an accommodation to file written statement.

13. In spite of being granted sufficient opportunity on further two dates, the company failed to appear and **the case was fixed for ex parte hearing for the 3<sup>rd</sup> time**, when the ex parte award was passed.

It thus appears that the Tribunal vacated the order of ex parte hearing on two occasions and finally on the third occasion (ex parte hearing) the Court disposed of the case.

14. **This Court finds that the petitioner/company had sufficient notice and in spite of that was delaying the case before the Tribunal which was causing prejudice to the applicant/workman.**

15. Thus, considering the said conduct of the petitioner who waited for two years before praying for setting aside of the ex parte award, this Court finds that the petitioner's case has no merit and such conduct of the petitioner is clear abuse of the process of law and accordingly **the writ petition stands dismissed.**

16. Let a copy of this order along with the records of the Tribunal as called for, be sent down at once to the 7<sup>th</sup> Industrial Tribunal, West Bengal.

17. **Department to act on urgent basis** in sending the records to the Tribunal who shall proceed in accordance with law, considering that the writ application is of the year 2015.

18. Connected application, if any, stands disposed of.

19. Interim order, if any, stands vacated.

20. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**[Shampa Dutt (Paul). J]**