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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9510/2018 and CM APPL. 37017/2018

M/S NITIKA FASHION AND ANR.Petitioners

Through: Ms. Arati Mahajan and Ms. Jyotsna S.,
Advocates

versus

SURESH CHAND AND ANR.Respondents

Through: Appearance not given

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

14.05.2026

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1. The present petition is directed against the order dated 26.05.2018 vide which, the petitioner/management's application filed under Order IX Rule 13 CPC came to be dismissed by the Ld. Labour Court on the ground that the ex-parte award had already been published on 23.07.2010 and had become enforceable with effect from 21.08.2010, and therefore, on the date of filing the application, 28.08.2010, the Labour Court had become functus officio and could not entertain the said application.

2. At the outset, learned counsel for the respondents submits that he has no objection if the said application is considered on merits.

3. A gainful reference in this regard may be made to the decision of the Supreme Court in Haryana Suraj Malting Limited. v. Phool Chand¹ it was discussed that whether the Labour Court/Tribunal has power to consider an application for recall of an ex-parte award. The relevant observations are as hereunder:-

“37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award

¹ (2018) 16 SCC 567



to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.

38. We may also add that when an application for setting aside an ex parte award is made at the instance of the management, the Labour Court/Tribunal has to balance equities. ...”

4. In view of the above, the present petition is allowed. The Tribunal shall consider the application on its own merits in view of the settled position of law vide the aforesaid judgment.
5. For the aforesaid purpose, list before the Tribunal on 28.05.2026.
6. In view of the above, the present petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J

MAY 14, 2026

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