
(2012) 07 BOM CK 0178

In the Bombay High Court

Case No : Writ Petition No. 3447 of 2010

Ashish Arun kumar Kejriwal

APPELLANT

Vs

Mills Mazdoor Sabha and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : (2012) 5 ALLMR 368 : (2012) 135 FLR 451

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : K.S. Bapat with Jayesh Desai instructed by Desai and Desai Associates, for the Appellant; Mahesh Thorat instructed by y Sunil V. Patil, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Heard finally by consent of the parties. After hearing both the parties on 21st June 2012, I have already given reasons and adjourned the matter for the respondents to place more material on record in support of the ex-parte order and the reasons for rejecting application filed by the petitioner for setting aside the same and for restoration of the original proceedings. The reasons so recorded need to be treated as a part of this order also. The learned counsel appearing for the respondent has again relied on the reasoning given by the learned Industrial Court, basically, on paragraphs 5 to 8 and 9 and thereby contended to maintain the order. However, the respondents are unable to place any material on record, for which time was granted. Admittedly, the application for bringing Mr. Amar Anilkumar Kejriwal on record was filed by the respondent without taking note of and/or without verifying about other legal heirs of the deceased. Admittedly, no such person in the name of Mr. Amar Anilkumar Kejriwal is legal heir of the deceased. The services made by pasting, even if any, that cannot be treated as good service unless proper and legal heirs are brought on record of the deceased. The receipt of such notices in the wrong name cannot be treated as valid service. There is no material on record to show that some

authorised person and/or some legal heirs of the deceased has accepted and/or received any copies.

2. It is relevant to note that the purpose and object of service of any Court notice is that the concerned person against whom the other side wants to claim any relief and/or want them to make some payment, and/or have some rights which they want to execute, must be joined as a party. It is also necessary for the Court to verify and confirm before issuing notice and/or to see that the notice is duly served on the correct and necessary parties. The person who provides the list and/or name, always takes a risk if improper and incorrect name and/or legal heirs are not brought on record. The burden always lie upon the petitioner or the plaintiff one who has invoked the proceedings to see that the proper and/or necessary parties are joined and served. The Court also once the valid service is proved, proceed to pass appropriate order. There is no point in passing the order against the person who is either not necessary or proper party and/or against wrong person. It subverts the purpose, if the order is passed against the person who is not necessary and/or proper party. There is no question on presumption and assumption in the case where admittedly the application was filed by the respondent to bring on record the name of person who is not connected and/or concerned with the deceased. Therefore, to say that the alleged legal heirs of the deceased proprietor were deliberately avoiding to appear in the Court to postpone the so called liability based upon the Award so passed is not acceptable. Signing of such R.P.A.D itself is not sufficient. It should be signed and/or received by the concerned persons who are the resident of the address given by the petitioner. In the present case no such person as named resides in the same address. The case of the petitioner therefore cannot be over looked.

3. The learned counsel appearing for the petitioner on instructions now pointed out that there are total four legal heirs of the deceased Proprietor who are necessary to be taken or brought on record for proper adjudication of the issues so raised. For whatsoever may be the reason, admittedly, the respondents could not brought all legal heirs on record at the relevant time. The application, therefore, so filed by the petitioner for setting aside the exparte award/order as it has been passed against dead person-original Proprietor and the person who is not in existence. Such Award, in my view, will create further complication when the same is put for execution by the respondents in whose favour the Award is passed. I am inclined to quash and set aside both impugned orders.

4. Therefore, taking over all view of the matter and considering that the rights of workers are also involved and so also the rights of employer it is observed that the Court to give opportunity to both to put their case so that a proper and executable order can be passed. Mere filing of proceedings itself is not sufficient to claim and/or to adjudicate the claim. The order should be executable. Mere passing of such exparte decree will not solve the problem even of the workers.

5. The learned counsel appearing for the petitioner fairly stated on instructions that they will appear before the Court after four weeks and will also provide him

with the name and address of the other legal heirs and addresses so that the respondents workers-original complainants will take appropriate steps to bring those legal heirs on record. The Court to consider same in accordance with law even by considering the delay in filing such applications to bring the legal heirs on record in view of the facts and circumstances of the case. Resultantly, application filed by the petitioner for restoration is allowed. The exparte Award dated 21.11.2008 is quashed and set aside. The complaint is restored back. The learned Judge to pass appropriate order after completing all the formalities so recorded and by giving opportunity to all the parties. However, considering the long time span, it is desirable that the complaint itself be disposed of within six months. However, this is subject to cost of Rs. 10,000/- to be paid within three weeks. The costs be deposited in the Industrial Court. The Petition is accordingly allowed. No order as to costs.