

(2019) 11 DEL CK 0058

In the Delhi High Court

Case No : Civil Miscellaneous Application No. 7662, 7663 Of 2019 In
CONT.CAS(C) No. 526 Of 2017

Ashok Hotel Mazdoor Janta Union

APPELLANT

Vs

Vijay Dutt

RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

Citation : (2019) 11 DEL CK 0058

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Ravi Sikri, Deepank Yadav, Rohit Agrawal

Judgement

C.Hari Shankar, J

CM No.7663/2019 (Exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

CM No. 7662/2019 (clarification of order dated 29.10.2018)

1. This application, filed on behalf of the respondent in the Cont. Cas(C) 526/2017 seeks modification of the order dated 29th October, 2018.

2. Cont. Cas(C) 526/2017, preferred by the petitioner-Union alleged contumacious disobedience by the respondent/contemnor, of order dated 27th March, 2012, passed by this Court, which reads as under :

"1. This contempt petition alleges contumacious infraction, by the respondent-contemnor, of order dated 27th March, 2012, passed by this Court. The operative portion of the said order reads thus:

"Considering all the facts and circumstances, the petitioner-management is directed to pay to the workers involved in this case wages @ Rs. 15,000/-per

month, which shall be subject to the final outcome of the writ petition and further subject to the workmen given an undertaking to this Court in writing that they shall refund the amount over and above the minimum wages which they are getting to the management in case its writ petition is allowed. This undertaking shall be furnished by them within three weeks and thereafter petitioner shall make the payment of wages @ Rs. 15,000/- per month, as directed aforesaid, from the date of filing of the writ petition till its disposal. The arrears upto March 2012 shall be cleared within four weeks and further payments shall be made on or before 10th day of each succeeding month. This application stands disposed of accordingly."

2. Learned counsel for the petitioner has four grievances, insofar as compliance with the directions contained in the afore-extracted para is concerned, viz., (i) that payment, as made to his client, has been calculated from February, 2010, whereas the writ petition was filed in December, 2009, so that the payment fell short by two months; (ii) that the payment is being made partly by the contractor and partly by the respondent; (iii) that the provident fund is being deducted while making the said payment and (iv) that his client is not being paid overtime allowance.

3. It is trite that contempt proceedings cannot be used as a vehicle to secure more than is granted by the order, of which contempt is urged.

4. Mr. Sikri, learned Senior counsel for the respondent, candidly acknowledges that there may be a calculation error in the quantum of wages, which had been reckoned from February, 2010, instead of December, 2009, which was the date of filing of the writ petition.

5. He undertakes to ensure that the differential wages for the period December, 2009 to February, 2010 would be disbursed to the petitioner within a period of three weeks.

6. Insofar as the remaining benefits of the petitioner are concerned, I am of the view that, once the petitioner secures the payment of wages, as granted by this Court, commencing December, 2009, no further proceedings for contempt would lie.

7. As such, subject to the respondent making payment of the differential wages, for the period December, 2009 to February, 2010, to the petitioner, within a period of six weeks from today, this contempt petition would stand disposed of.

8. Needless to say, the petitioner would be at liberty to urge any other reservations, which he may have, regarding the amount to be made, by way of a separate writ petition, which would be decided on its own merits."

3. The aforesaid Contempt Petition was disposed of, by me, vide order dated 29th October, 2018. It was noted that the grievance of the petitioner, in the Contempt Petition, insofar as compliance with the directions issued by this Court on 27th March, 2012, was concerned, was,

(i) that payment, as made to his client, had been calculated from February, 2010, whereas the writ petition was filed in December, 2009, so that the payment fell short by two months; (ii) that the payment was being made partly by the contractor and partly by the respondent; (iii) that the provident fund was being deducted while making the said payment and (iv) that his client was not being paid overtime allowance.

4. Apropos the first grievance of the petitioner, i.e., that payment, to the workmen, had been calculated with effect from February, 2010, whereas the writ petition was filed in December, 2009, Mr. Sikri, learned Senior Counsel appearing for the respondent had stated, on 29th October, 2018, that there could have been a calculation error in reckoning the quantum of wages from February, 2010, instead of December, 2009. He, accordingly, had undertaken to disburse differential wages, to the petitioner, for the period from December, 2009 to February, 2010, as directed in the order dated 27th March, 2012 supra.

5. In the circumstances, observing that the other grievances of the petitioner were not amenable to resolution in contempt proceedings, I had disposed of Cont.Cas(C) 526/2017, vide my order dated 29th October, 2018, recording the above statement of Mr. Sikri, and subject to the respondent making payment of the differential wages, for the period December, 2009 to February, 2010, to the petitioner, within six weeks.

6. The respondent has now moved the present miscellaneous application (CM 7662/2019) pointing out that, in fact, W.P.(C) 632/2010 had been filed on 30th January, 2010, and not in December, 2009. Mr. Sikri, learned Senior Counsel, who appears on behalf of the applicant/respondent in the Contempt Petition, submits that the undertaking given by him, as recorded in the order dated 29th October, 2018, was believing the averment, made by the petitioner in the Contempt Petition, to the effect that W.P.(C) 632/2010 had been filed in December, 2009. As a matter of fact, he points out, the writ petition had been filed on 30th January, 2010. The directions contained in the order dated 27th March, 2012, therefore, Mr. Sikri points out, would result in benefit enuring to the petitioner only with effect from 30th January, 2010, being the date of filing of the writ petition, and not from December, 2009. Mr. Sikri points out that the differential wages which would be payable to the contesting workmen who are members of the petitioner-union, would work out to over Rs. 11 lakhs, which has necessitated filing of the present application.

7. On a perusal of the Contempt Petition, I find that there is, indeed, an averment in the said petition, in para 8(a) to the effect that W.P.(C) 632/2010 had been filed in December, 2009. For ready reference, para 8(a) of the Contempt Petition, is reproduced as under:

"8(a) Instead of paying arrears from date of filing of the writ petition, the contemnor/management paid the arrears to the workmen from February, 2010 to September 2014. It is not out of place to mention over here that the writ petition

was listed on 01.02.2010 thus, the writ petition was obviously filed in December, 2009 or any date prior to that, thus the workmen are entitled to arrears for the month of December, 2009 or any prior month in which the writ petition was filed. Copy of the order issued by the management in October 2014 is annexed herewith as Annexure P-4."

8. Mr. Upadhyay, president of the petitioner union, who appears in person, acknowledges the fact that the writ petition was filed on 30th January, 2010. He, however, submits that he, and has other contesting co-petitioners have still not been paid all amounts which were due to be paid to them in law.

9. As already observed by me in my order dated 29th October, 2018, all other grievances, of the petitioner, would have to be agitated separately, and cannot constitute the basis for proceeding against the respondent for commission of contempt.

10. In view of the fact that it is conceded, *ad idem*, that W.P.(C) 632/2017, was, in fact, filed on 30th January, 2010, and not in December, 2009, as the petitioner chose to aver in the Contempt Petition, the direction to the respondent, as contained in the order dated 29th October, 2018, to disburse differential wages, to the members of the petitioner union, for the period December, 2009 to 30th January, 2010 would stand deleted. It is clarified that the order dated 27th March, 2012 *supra* would entitle the members of the petitioner union to be paid Rs. 15,000/- per month only with effect from 30th January, 2010, being the date of filing of the writ petition.

11. The order dated 29th October, 2018 stands modified accordingly.

12. This application is disposed of in these terms.