
(2009) 05 DEL CK 0334

In the Delhi High Court

Case No : L.P.A. No. 189/ 2009 and C.M. No. 6153 of 2009

Five Dimensions Computers (P) Ltd.

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2009) 05 DEL CK 0334

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : G.C. Sharma, for the Appellant; Rajeshwar Kumar Gupta, No. 2, for the Respondent

Final Decision : Dismissed

Judgement

1. The present appeal arises out of the impugned order dated 8th April, 2009 passed by the learned Single Judge.

2. The respondent No. 2/Workman (original respondent No. 2 in the Writ Petition) was employed with the appellant-Management (original petitioner in the Writ Petition). As per the respondent No. 2, the Management illegally terminated his services. Since the Management did not make any payment pursuant to the demand notice sent by respondent No. 2, therefore, the application u/s 33C(2) of the Industrial Disputes Act, 1947 was filed before the Labour Court. The notice of the application was served by way of affixation but nobody appeared on behalf of the appellant-Management before the Labour Court. The appellant-Management was proceeded ex parte and the Award was passed against the appellant-Management.

3. Learned Counsel for the appellant submitted before the learned Single Judge that no notice was ever served upon the appellant and the Labour Court wrongly passed the ex parte order. As per the appellant-Management, it is nowhere

recorded in the statement of the Process Server that he had affixed the summons after the same was refused by any representative of the appellant-Management and thus, the affixation was not as per the provisions of Order V Rule 20 of the Code of Civil Procedure, 1908.

4. The respondent, on the other hand, pointed out before the learned Single Judge that the appellant-Management was throughout aware of the proceedings before the Labour Court and deliberately chose not to appear. As per respondent No. 2, the Labour Court also recorded the statement of Process Server to satisfy itself whether the Process Server had visited the premises of the appellant-Management or not so as to affect the service. The counsel for the respondent No. 2 further submitted before the learned Single Judge that as per the appellant it had come to know about the Award through notice dated 6th February, 2008 then how could the appellant have obtained a certified copy of the Award earlier from the Copying Agency on 31st October, 2007. The respondent No. 2 pointed out the said date from the certified copy placed on record by the appellant where the seal of the Copying Agency was affixed. It was then contended by respondent No. 2 that the appellant had deliberately tried to mislead the Court that it came to know about the ex parte Award only through the office of Labour Commissioner or through the office of Assistant Collector.

5. The learned Single Judge has rightly held that the appellant was well aware of the ex parte Award at least when it had applied for certified copy and since the appellant had suppressed these facts by not mentioning the same in the petition, the Court would not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in favour of the appellant who had not approached the Court with clean hands. It is a fundamental principle of law that a person invoking the jurisdiction of the Court must come with clean hands and must make a full and complete disclosure of the facts to the Court.

6. The learned Single Judge has rightly dismissed the writ petition and directed the amount deposited by the appellant pursuant to the direction given by the Court to be released in favour of respondent No. 2 along with interest, if any accrued thereupon.

7. In view of what has been stated hereinabove, we see no infirmity in the order passed by the learned Single Judge. The appeal is accordingly dismissed. The pending application also stands disposed of.