

(2009) 04 DEL CK 0238

In the Delhi High Court

Case No : Writ Petition (C) No. 7244 of 2008

Five Dimensions Computers (P) Ltd.

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision : 08-04-2009

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) 04 DEL CK 0238

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : G.C. Sharma, for the Appellant; Rajeshwar Kumar Gupta, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this petition filed under Article 226 of the Constitution of India the petitioner seeks to challenge the impugned ex-parte award dated 4.10.2006.

2. Brief facts relevant for deciding the present petition are as under:

The respondent/workman was employed with the petitioner management since 3.8.2004 as a Computer Engineer/Operator on the monthly salary of Rs. 8000/-. The petitioner management changed its name and address. It is stated that management illegally terminated the services of the respondent/workman with effect from 18.5.2005. Demand notice was sent by the petitioner to the management but no payment was made by the management, therefore the application u/s 33C(2) of the I.D. Act was filed before the Labour Court. The notice of the application was served by way of affixation but nobody appeared on behalf of the petitioner management before the Labour Court. As a result of non-appearance, the petitioner was proceeded ex-parte and the impugned award was passed against the petitioner management.

3. Counsel for the petitioner submits that no notice was ever served upon the petitioner by the Labour Court and wrongly the Labour Court passed ex-parte order against the petitioner. On perusal of order dated 19.5.2006 counsel submits that nowhere in the statement of the process server it is recorded that he had affixed the summons after the same was refused by any of the representatives of the petitioner. Counsel thus submits that the affixation as per the provision of Order 5 Rule 20 CPC could have been only after the summons were refused by the petitioner and not in normal circumstances. Counsel for the petitioner further submits that the petitioner came to know about passing of the said ex-parte award when the petitioner was called by the Office of the Labour Commissioner and prior to that the petitioner was not aware about the said award. Counsel thus submits that the matter be remitted back to the Labour Court for giving an opportunity to the petitioner to contest the statement of claim of the respondent on its merits.

4. Refuting the said submissions of the counsel for the petitioner, Mr. Rajeshwar Kumar Gupta counsel for the respondent submits that the petitioner was throughout aware of the proceedings before the Labour Court and deliberately it did not choose to appear. Counsel further submits that the Labour Court had taken due caution before passing an ex-parte order against the petitioner. Even a statement of the process server was recorded by the Labour Court to satisfy itself whether the process server had visited the premises of the petitioner or not so as to effect the service. Counsel for the respondent further points out that the ex-parte order was passed on 4.10.2006 and the petitioner had received the notice from the office of the Assistant Collector vide notice dated 6.2.2008. Counsel for the respondent further submits that as per the petitioner it came to know about the award through notice dated 6.2.2008, then how the petitioner could have obtained the certified copies of the award earlier from the copying agency i.e. on 31.10.2007. Counsel has pointed out the said date from the certified copy placed on record by the petitioner where the seal of the copying agency is affixed. Counsel thus states that the petitioner has deliberately tried to mislead this Court that it came to know about the said ex-parte award only through the office of the Labour Commissioner or through the office of the Assistant Collector.

5. I have heard counsel for the parties and perused the record.

6. To invoke the writ jurisdiction under Article 226 of the Constitution of India, the first and foremost thing is that the party should approach the court with clean hands. In this regard in *Raj Kumar Soni and Another Vs. State of U.P. and Another*, ; the Hon^{ble} Apex Court observed as under:

It is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court

to scrutinise the nature and content of the right alleged to have been violated by the authority.

7. Perusal of the certified copy of the judgment clearly shows that the same was ready on 22.10.2007 and accordingly delivered on 31.10.2007 to the petitioner. It is also evident that the petitioner must have applied to obtain the certified copy even prior to the said date. In the petition the petitioner nowhere has stated that the petitioner was called by the office of the Labour Commissioner after passing of the ex-parte award. The petitioner, however, has placed on record the copy of the notice issued by the office of the Assistant Collector which clearly gives the date of 6.2.2008 and which must have been received by the petitioner within a period of one week or 10 days. It is thus apparent that the petitioner was well aware of the ex-parte award at least when it had applied for certified copy. Since the petitioner has suppressed these facts by not mentioning the same in the present petition, therefore, this Court is not inclined to exercise equitable jurisdiction under Article 226 of the Constitution of India in favour of the petitioner, who has not approached this Court with clean hands. The present petition is accordingly dismissed.

8. Since the present petition has been dismissed, therefore, at the oral request of the counsel for the respondent, the amount of Rs. 46,156/- which was deposited by the petitioner pursuant to the direction given by this Court be released in favour of the respondent, along with interest, if any, accrued thereupon.