

(2018) 04 RAJ CK 0254
In the Rajasthan High Court
Case No : Writ Restoration No. 19 of 2016

**General Manager, Upbhokta Wholesale Bhandar Ltd. @APPELLANT@Hash
State of Rajasthan & Ors.**

Date of Decision : 27-04-2018

Acts Referred:

Citation : (2018) 04 RAJ CK 0254

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Anil Vyas, P.K. Mathur

Final Decision : Allowed

Judgement

Defect No. 1 pointed out by the office, in the circumstances of the case, is overruled. Defect Nos. 2 and 6 are also overruled.

Heard learned counsel for the parties on the application seeking restoration of the writ petition/recalling of the order dated 20.11.2013 passed by a Co-ordinate Bench of this Court.

The Upbhokta Wholesale Bhandar Limited filed a writ petition being S.B.C.W.P. No. 3456/2002 aggrieved against award dated 04.06.2002 passed by

Labour Court, Bikaner, wherein, the workman Mohan Lal was impleaded as respondent No. 2. The writ petition was admitted on 12.09.2002 and

notices were ordered to be issued. The operation of the award dated 04.06.2002 was stayed.

On the notices sent to respondent No. 2 it was reported that he had died and application was filed by the petitioner for bringing on record the legal

representatives of deceased respondent No. 2 Mohan Lal.

By order dated 07.05.2003 notices were ordered to be issued to legal representatives of respondent No. 2.

After the notices were served, by order dated 12.12.2003 the application was allowed and legal representatives were taken on record and amended

cause title was directed to be filed within a period of one week.Â Whereafter on 12.03.2004 the interim order dated 12.09.2002 was confirmed to last

till disposal of the writ petition.

On 20.11.2013 when the writ petition came up for adjudication in the spirit of Lok Adalat before this Court, the Coordinate Bench of this Court, inter

alia, passed the following order:-

â??Learned counsel for the petitioner submits that during the pendency of this petition for writ, the workman died much back on 28.09.2002.Â His

legal representatives have also been taken on record, but they were unrepresented despite service.

The petition for writ has already been admitted and the interim order passed by this Court too was confirmed.Â It appears that the legal

representatives of the deceased workman Mr. Mohan Lal S/o Nenu Ram Hateela are not at all interested to get the award executed and further to

contest the same, as such, no useful purpose shall now be served either by keeping this petition for writ pending nor even by directing the petitioner-

employer to execute the award. Accordingly, the award impugned is set aside.Â The writ petition is disposed of, accordingly.â??

The present application has been filed by the applicant â?" wife of deceased respondent No. 2 seeking recall of the order dated 20.11.2013.

It is submitted by learned counsel for the applicant that though notices of application for bringing on record the legal representatives were, inter alia,

served on the applicant, the notices of the writ petition was neither ordered to be issued to them nor were ever served on them and, as such, the order

dated 20.11.2013 deciding the writ petition ex parte deserves to be recalled.

Learned counsel appearing for Upbhokta Bhandar submitted that notices of the application for bringing on record legal representatives was served on

the applicant and once she chose not to appear, there was no necessity of sending notices of the writ petition again and, therefore, the application

deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

So far as the sequence of events, as noticed hereinbefore are concerned, the

same are not in dispute.Â Admittedly, the notices of application for bringing on record legal representatives were ordered to be issued and served on the proposed legal representatives and when they did not appear pursuant to service of the said notices, the application was allowed.Â However, once they are taken on record, it was necessary to issue notices of the writ petition to the legal representatives as even in the first stance when the notices were issued to the workman-Mohan Lal, before service of notice, he was already died.

The submission made by learned counsel for the respondents that as in response to the notice of application for bringing on record the legal representatives they chose not to appear, there was no necessity to send further notices is concerned, as the prayer in the application was limited to take them on record, it cannot be said that the non-appearance pursuant to the notices of the said application, the main matter/writ petition could be heard on merits, without issuing notices of the writ petition to them.

Consequently, the application filed by the applicant is allowed.Â The order dated 20.11.2013 is recalled.Â The writ petition being S.B.C.W.P. No.

3456/2002 is restored to its original number.

List the writ petition after showing name of Mr. P.K. Mathur and Mr. Anil Vyas as learned counsel for the petitioner/respondent in the writ petition, in the cause list.Â Learned counsels may also file their Vakalatnama in the writ petition.