
(2014) 05 CAL CK 0043
In the Calcutta High Court
Case No : W.P. 5358(W)/2014

Hindustan Motors Ltd.

APPELLANT

Vs

First Labour Court

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Citation : (2014) 143 FLR 528 : (2014) 3 LLJ 761 : (2014) LLR 769

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Deepak Ghosh, Ranajay De and Rakshit, Advocate for the Appellant; Lovely Dasgupta, Ashmita Chatterjee, L.N. Ghosh and Jasobanta Rakshit, Advocate for the Respondent

Judgement

Soumen Sen, J.—In this writ application the petitioner has challenged the order passed by the Presiding Officer, 1st Labour Court, Government of West Bengal on 26th December, 2012 in rejecting the application by the writ petitioner for recalling the award passed ex-parte on 26th December, 2013. The writ petitioner contended before the said Labour Court that they became aware of the award only on 6th March, 2013. The award was published on 21st February, 2013. After getting the award the company enquired from the advocate engaged by the company and in course of such enquiry in the second week of March, 2013 the company became aware that an ex-parte award was passed as the said lawyer could not appear on 20th December, 2012. Thereafter, the writ petitioner engaged another advocate in the third week of March, 2013. The basis of the recalling application appears to be the usual story of laches and of negligence on the part of the earlier advocate to conduct the matter properly. The respondent-workman appeared and in the written objection it was stated that an application u/s 10(1)(B) and (D) was filed on 21st June, 2000 and the award was published on 21st February, 2013. The review application was filed on 29th April, 2013 with a view to deprive the workman of his legitimate claim. The learned Presiding Officer after going through the records found that after closing of the evidence of the workman at least on four occasions time was given to the management of

the company to adduce evidence: Thereafter, on 23rd August, 2012 it was stated before the Tribunal that the management would not produce any witness and on that basis the evidence was closed and the matter was fixed for argument on 13th September, 2012. But none appeared on that day on behalf of the company and accordingly a show cause notice was issued upon the company fixing date for filing show cause by the company on 17th October, 2012. The company showed cause on 17th October, 2012 and upon payment of cost of Rs. 200 the date for argument was fixed on 3rd December, 2012. On 3rd December, 2012 parties were present and the workman was heard at length and the matter was fixed on 12th December, 2012 for argument on behalf of the management. On 12th December, 2012 the management made their submissions in part and the matter was adjourned till 20th December, 2012. On 20th December, 2012 the management did not appear and accordingly the Labour Court observed that since on earlier occasion show cause notice was issued and the company appeared, there is no requirement to issue any show cause notice inasmuch the company had already made substantial argument on the merits of the disputes and on such observation hearing was concluded. Thereafter, the Presiding Officer passed the award on merits.

2. It appears from the record of the proceeding that the management was not diligent to proceed with the matter and on many occasion the matter was adjourned on the prayer of the management. There is no explanation offered for, non-appearance on 20th December, 2012 when the fact remains that the matter was argued on the previous two occasions at length. It cannot be said that the award that was passed by the Tribunal did not take into consideration the argument made by the management. The argument of the management has been adequately reflected and recorded in the award.

3. Considering the matter from such perspective, I think that the Presiding Officer is justified in holding that this is not an ex-parte award but it is an award on merits.

4. I have considered the award passed by the Tribunal and it appears that the Award is on merit. The Tribunal has taken into consideration the points urged by the management and have dealt with each of the issues in detail after considering the evidence on record has passed the award. Accordingly, I find no reason to interfere with the order dated 11th December, 2013 (wrongly mentioned as 20th December, 2013) passed by the learned Judge, First Labour Court. The writ application accordingly fails.

5. It is, however, made clear that I have not gone into the merits of the award. There shall, however, be no order as to costs.