

(2011) 12 AHC CK 0388

In the Allahabad High Court

Case No : C. Miscellaneous W.P. No. 74692 of 2011

Indcoat Shoe Components Ltd.

APPELLANT

Vs

Jagan Kashyap and Another

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 3, Order 9 Rule 5
Industrial Disputes (Central) Rules, 1957 — Rule 11, 16(2)

Citation : (2012) 132 FLR 537 : (2012) LLR 311

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Shri Ashok Trivedi, learned Counsel for the petitioner and Shri L.M. Singh, who has put in appearance on behalf of respondents No. 1.

At the outset, Shri L.M. Singh, learned Counsel appearing for contesting respondent made a statement that he does not propose to file any counter-affidavit and with the consent of the learned Counsel for the parties, the writ petition is being finally disposed of at this stage under the Rules of the Court.

2. This petition is directed against the award dated 31.5.2010 passed by prescribed authority. Labour Court II. Kanpur and the order dated 2.11.2011 rejecting the application moved on behalf of the petitioner for setting aside the award dated 31.5.2010 which was, admittedly, ex parte.

3. Undisputed facts are that an industrial dispute was raised by respondent No. 1 on the ground that services have wrongly and illegally been terminated by the petitioner-employer w.e.f. 19.1.2009. The dispute was referred to Labour Court and registered as Adjudication Case No. 145 of 2009. An ex parte award dated 31.5.2010 was made by the Labour Court directing reinstatement of the respondent with full back-wages and all consequential benefits. An application dated 3.1.2011 was moved by the petitioner for recall of the ex-parte award

mainly on the allegation that notice issued by the Labour Court was not served upon the petitioner or even any person on behalf of the petitioner.

4. Rule 16(2) of the Industrial Disputes Rules, 1957 provides that Labour Court may set aside the order passed against a party in his absence on an application made for the purpose on sufficient cause being shown for the absence. Thus, there cannot be any dispute with regard to the fact that Labour Court is vested with the power to set aside or recall the ex-parte award.

5. The prescribed authority has rejected application moved on behalf of the petitioner for recall of the ex-parte award on the ground that summons were sent through speed post which was not returned back unserved, as such, there was a presumption of service and the petitioner has failed to produce any evidence to show that the concerned summons/notice was not received by any person on behalf of petitioner-company.

6. It is submitted that the prescribed authority wrongly rejected the application of the petitioner on the ground that petitioner could not lead evidence to demonstrate that summons/notice were never received by him as no evidence could be led in negative. It is further submitted that categorical averments made in the affidavit filed by the petitioner along with the recall application asserting that the notice/summons issued was never served upon the petitioner or any authorised person, have wrongly been disbelieved and the application has been rejected solely on the ground of presumption of service. It has also been, pointed out that in the reply submitted by the respondent-workman, there was no denial of the fact that no notice or summons was ever served.

7. In reply, learned Counsel appearing for the contesting respondent has tried to justify the impugned order.

8. I have considered the arguments advanced by the learned Counsel for the parties and perused the record.

Rule 11 of the U.P. Industrial Rules, 1957 provides that any notice, summons process or order issued by a Board, Labour Court or Tribunal or Arbitrator may be served either by personal delivery or by registered post or in any manner prescribed in this behalf in the Code of Civil Procedure, 1908.

9. A perusal of the order sheet filed as Annexure 9 to the writ petition goes to show that summons were issued to the petitioner by registered post. However, the impugned order rejecting the recall application records that summons were issued through speed post, which is one of the acknowledged mode of delivery of summons prescribed by Order IX, Rule 3, C.P.C.

10. The two modes being different, obviously, there is a contradiction, inasmuch as order sheet records that summons were issued through registered post, whereas the impugned order mentions that summons were sent through speed post. There is nothing on record to show that summons sent through either of the one mode was accompanied with an acknowledge due.

11. Under provisions of Order IX, Rule 5, service of summons is liable to be held sufficient in case postal article is received back by the Court with an endorsement made by a postal employee or any person authorised by the courier service that defendant or his agent has refused to accept the delivery. Proviso further provides that where the summons were properly addressed, and duly sent by registered post acknowledgement due, a declaration of presumption of service can be made, in case the acknowledgement is not received back by the Court within 30 days for whatever reasons. Aforesaid provisions clearly go to show that it is only in case summons are sent by registered post acknowledgement due, the sufficiency of service can be recorded in case the acknowledgement is not received by the Court within 30 days from the date of issue of summons. In case of service of summons by other modes, the sufficiency of service can be recorded in case there is an endorsement made by postal employee or any other authorised persons of the courier service that defendant or his agent has refused to accept the delivery of postal article or the postal article itself containing the summon is received back by the Court.

12. Thus, there are different conditions set out for recording sufficiency of service in case of different modes of service of summons provided for. One further requirement for recording satisfaction of service is that the summons should be properly addressed.

13. In the case in hand, it is not clear whether the summons were sent by registered post or through speed post. If it was sent through registered post, then sufficiency of service could only have been declared if the registered post was sent acknowledgement due. There is no finding that in case the summons were sent through registered post, it was along with an acknowledgement and the same was not received back. In case, it was sent through speed post as mentioned in the impugned order, the requirement was that postal article ought to have been returned back, then only the sufficiency of service could have been recorded. Further no finding has been returned that the summons were properly addressed.

14. The petitioner by making positive assertion that notice and summons were never served, denied the service. The fact was not denied in the reply filed by the respondent-workman. The Presiding Officer, Labour Court without considering this aspect of the matter, simply dismissed the recall application on the ground that the summons were sent through speed post and the petitioner has failed to produce any evidence to demonstrate that it was not served. As a matter of fact, the burden shifted upon the respondent-workman to have established by producing positive evidence that there was proper service of summons and the same was duly received by the petitioner.

15. In view of the above facts and discussions, the impugned order dated 2.11.2011 is hereby quashed. The Presiding Officer, Labour Court is directed to decide the application for setting aside the ex-parte award afresh in accordance with law and in the light of the observations made hereinabove within a period of

two months from the date of production of a certified copy of this order before him.

Till the disposal of the recall application, as directed aforesaid, recovery proceedings against the petitioner in pursuance to the ex-parte award shall be kept in abeyance.

Subject to aforesaid observations and directions, the writ petition stands allowed.

However, there shall be no order as to costs.