
(2006) 04 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1404 of 1999

K.K. Chadha

APPELLANT

Vs

The P.O., Labour Court IV and Another

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(3), 29, 33(C)

Citation : (2006) 04 DEL CK 0028

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Pushpa Gupta, for the Appellant; R.K. Singh, for Resp. 2, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By this writ petition, the petitioner assails an order dated 6th November, 1998 passed by the Labour Court on an application filed by the respondent/workman u/s 33(C)(ii) of the Industrial Disputes Act, 1947. It appears that the respondent/workman was employed as a driver by the petitioner between the period from 16th February, 1987 till 10th January, 1991 on a monthly salary of Rs. 1700/-. After his services were terminated, the workman filed a complaint to the Labour Court Commissioner in respect of which the petitioner received a notice dated 13th March, 2001. The workman had also filed a complaint dated 23rd April, 1991 to the Conciliation Officer wherein the workman had prayed for a direction to the petitioner to take him back on service with all back wages and salary.

2. According to the petitioner, in the proceedings which were conducted before the Conciliation Officer, the parties entered into a full and final settlement of all disputes which were reduced to a Memorandum of Settlement dated 24th July, 1991 which has been placed before this Court as Annexure P-6. It is pointed out that in terms of the settlement, the workman had agreed to receive a total amount of Rs. 8500/-, which was to be paid to the workman in four instalments

which amount to Rs. 1000/-, Rs. 700/-, Rs. 5000/- and Rs. 1800/- on 24th July, 1991. The Memorandum of Settlement which has been placed on record noticed that the workman has received Rs. 8500/- in full and final settlement. The petitioner has placed before this Court a photocopy of the receipt dated 24th July, 1991 which has been executed by the respondent acknowledging receipt of the bank draft of Rs. 5000/-. According to the petitioner, this amount was towards the settlement amount and has been paid before the Labour Court/ Conciliation Officer.

3. Thereafter, it appears that the respondent has filed an application u/s 33(C)(ii) of the Industrial Disputes Act, 1947 dated 29th November, 1994 before the Labour Court stating the workman has not received overtime allowance, bonus, leave encashments etc. totaling Rs. 1,13,831.31/-. The Labour Court itself noticed all these proceedings. The petitioner has contended that no notice of the proceedings before the industrial adjudicator was ever served upon it. However, based on a receipt on the acknowledgment card, the petitioner was proceeded ex-parte by an order dated 6th November, 1998. The workman had filed an affidavit by way of evidence repeating the contents of his claim where upon the ex-parte order dated 6th November, 1998 was passed directing the petitioner to pay a sum of Rs. 1,13,831.31/- to the workman.

4. The petitioner has contended that it was unaware of the entire proceedings conducted by the Labour Court and gained knowledge of the pendency of the matter only when it received a notice from the Implementation Section of the Labour Department in order to implement the order dated 6th November, 1998.

5. Learned Counsel for the petitioner has placed reliance on the pronouncement of this Court reported at Satish Khosla Vs. M/s Eli Lilly Ranbaxy Ltd. and another, as well as another pronouncement of this Court reported at Holy Health and Educational Society (Regd.) Vs. Delhi Development Authority, to contend that the respondent is disentitled to any relief on the ground of concealment of material facts.

6. Learned Counsel for the petitioner in this matter has also vehemently urged that Section 18(3)(a) of the Industrial Disputes Act, 1947 mandates that a settlement arrived at during the course of conciliation is binding on the parties. My attention has also been drawn to the provisions of Section 29 of the Industrial Disputes Act, 1947 dealing with breach of settlement.

7. So far as bindingness of a settlement is concerned, reliance has been placed on the pronouncements of the Apex Court reported at National Engineering Industries Ltd. Vs. State of Rajasthan and Others, ; Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., as well as pronouncement of this Court reported at Blue Star Limited Vs. K.S. Khurana and Others,

8. Learned Counsel for the respondent has vehemently opposed the writ petition and contended that the stand of the petitioner to the effect that any amount was paid to the workman before any Labour Court is wholly false and incorrect. It is

further contended that the workman has not entered into any settlement and has not received any amount from the management. It is further contended that the respondent deliberately opted not to appear before the Labour Court in answer to the notice which was issued to the petitioner from the Implementation Section of the Labour Department.

9. I have heard learned Counsel for both the parties. I find that so far as service of the notice is concerned, perusal of the record of the Labour Court would show that there is some kind of acknowledgment card which has been received back by the Labour Court. From a comparison of the signatures of the petitioner as are available before this Court in several affidavits with the incomplete scribble on the Acknowledgment Card, it is evident, even to the naked eye that the signatures do not match. The petitioner writes an initial superimposed by the first letter of his last name and puts his full surname in his signatures. The signatures on the acknowledgment card is crude attempt of copying the petitioner's signatures and does not appear to be at all similar. I therefore, find force in the submission of the petitioner that it was never served with the notice from the Labour Court.

10. Even if this issue was to be held against the petitioner so far as issue whether the petitioner was served with notice or not, I find that the petitioner deserves to succeed on yet another ground. Perusal of the complaint dated 3rd April, 1991 filed by the workman shows that the workman claimed that he had spent Rs. 3000/- on repairs of the proprietor's Car No. DDA 5348 from his own bonus and that the petitioner had not effected payment of this amount. It was specifically stated by the workman that the petitioner had made payment of the salary which was payable to the workman for the month of December, 1990 on the 1st January, 1991 but had not paid salary for the period 1st January, 1991 to 9th January, 1991. Therefore, herein is an admission that that the workman had received an amount towards his salary.

In the claim dated 29th November, 1994 which was filed by the workman u/s 33(C)(ii) of the Industrial Disputes Act, 1947 before the Labour Court, the workman made a claim for wages for the period 1st January, 1991 to 10th January, 1991; bonus for three years; leave encashment for 59 days per year; overtime for four hours per day for the period from 16th February, 1987 to 10th January, 1991 and also complained against non-grant of leave on national holidays of 275 days.

11. The respondent/workman filed an application before this Court bearing CM No. 6184/1999 wherein it is pointed out that the workman does not give any particulars or details of the amount which had been actually received by him.

12. However, in the rejoinder dated 11th January, 2000 filed by the respondent in CM No. 6184/1999, in para 2, the workman has stated that he had got Rs. 8500/- towards his claim of salary due with bonus, overtime etc. before raising the dispute before the Labour Commissioner/Conciliation Officer. Whereas in para

3 of the rejoinder, the respondent went on to expand the same by stating that he had got Rs. 8500/- out of the claimed amount of Rs. 1,31,831.31 paise. This averment is repeated in later paras of the reply/rejoinder wherein the receipt of Rs. 5000/- by way of demand draft is admitted. However, the case set up by the respondent herein is that the amount which had been received by him is not on account of settlement but out of the claimed amount of Rs. 1,31,831.31 paise.

13. The petitioner has contended that it has made payments to the respondent/workman. These include payment of Rs. 1000/-, Rs. 700/-, Rs. 5000/- and Rs. 1800/- in four different instalments to the workman and it has further been contended that this amount was paid towards the settlement arrived at between the parties. The workman began by denying receipt of any payment from the petitioner. In subsequent pleadings the workman has admitted that he had received Rs. 1700/- as salary and also receipt of Rs. 5000/- by way of the bank draft out of the amount which has been claimed by him.

14. Matters do not end here. An affidavit has been again filed by the workman on 17th May, 2003 wherein the workman stated that in the year 1990, an accident had occurred when the parties were coming from Hathras to Delhi and the respondent had got instructions for the repair works of the vehicle i.e. proprietor's Car No. DDA 5348. It has been stated that on the repair work of the vehicle, the respondent had incurred expenses of Rs. 8500/- which includes the salary of Rs. 1700/- for the month of December, 1990. The workman has stated that he has received payment of only Rs. 6800/- out of this amount and that the balance amount of salary of Rs. 1700/- has not been paid to the workman till date. It has been stated herein that he has not included the salary amount of Rs. 1700/- in his claimed amount of Rs. 1,31,831.31 paise.

In this affidavit, the workman has also stated that he has received Rs. 6800/- at the residence of the petitioner.

It is noteworthy that even in this affidavit, the workman has gone ahead to state in para 5 that the statement made by him is "true and correct to the best of his knowledge."

15. From the perusal of the record, it is evident that the workman has taken different stands at different place. Beginning by a complete denial, he has admitted receipt of Rs. 5000/- by way of bank draft in one place and Rs. 6800/- in another place. These payments have admittedly been received before the workman filing its claim application on 29th November, 1994 u/s 33(C)(ii) of the Industrial Disputes Act, 1947. Yet, as is apparent from a perusal of the application that the workman has not disclosed receipt of these payments in it.

16. In the case of Satish Khosla Vs. M/s Eli Lilly Ranbaxy Ltd. and another, , this Court was called upon to consider the matter where the plaintiff did not disclose that in an earlier suit, the respondent had claimed a similar relief which had not been granted. It was held by the Division Bench that by withholding the plaint and the application in the earlier suit from the court and by not disclosing to the

court about the proceedings in the earlier suit and the stay having not been granted, the respondent/plaintiff had tried to get an advantage from the court. In these circumstances, it was held that the plaintiff had played fraud on the court as well as on the opposite party and that the suit filed by the plaintiff was liable to be dismissed in view of suppression and concealment of material facts and his failure to come to the court with clean hands. Warning was issued to the plaintiff in this behalf. Placing reliance on the pronouncements of the Apex Court reported at T. Arivandandam Vs. T.V. Satyapal and Another, and in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , it was held that courts of law are meant for imparting justice between the parties and that one who comes to the court, must come with clean hands. It was stated that a person whose case is based on falsehood has no right to approach the Court and can be thrown out at any stage of the litigation.

17. In the case of Holy Health and Educational Society (Regd.) Vs. Delhi Development Authority, , placing reliance on the pronouncement of this Court in Satish Khosla v. Eli Lilly Ranbaxy Ltd. and Anr. (supra) as well as on the pronouncement of the apex court reported at S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , it was held that the plaintiff had failed to disclose the proceedings in the earlier suit and thus, he was not granted stay thereon.

18. In 2003 I AD (Delhi) 369 entitled Kesho Lal Kapoor and Ors. v. Sh. Vinod Kapur and Anr., it was held that concealment of the fact by both the parties has a significant effect over the validity of the preliminary decree as well as its executability. Any decree obtained either through fraud or by concealment of such material fact which if taken into consideration would negate the decree itself cannot be deemed as final or unquestionable. Nobody can be allowed to usurp the right of other legal heirs that too in the property by not coming with clean hands in the court. In view of this finding, the application of the defendant for impleadment of party was allowed.

19. In the instant case, the workman made a claim to the Conciliation Officer on the 23rd April, 1991. He filed an application on 29th November, 1994 u/s 33(C) (ii) of the Industrial Disputes Act, 1947 claiming an amount of Rs. 1,31,831.31 paise from the petitioner. He claimed that no amount had been received by him after he left from his services. Before this court, the respondent has, however, taken different stands at different places which have been noticed herein above. However, in each of these stands, he has admitted that the amounts received by him were towards the amount which was claimed by him before the Labour Court. Therefore, the respondent had actually concealed payments which were actually received by him and the claim of the respondent before the Labour Court u/s 33(C)(ii) of the Industrial Disputes Act, 1947 was incorrect and admittedly exaggerated. The respondent was thereby undoubtedly guilty of concealment of material facts. In the light of the law laid down by the apex court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,

and in T. Arivandandam Vs. T.V. Satyapal and Another, as well as by this Court reported at Satish Khosla Vs. M/s Eli Lilly Ranbaxy Ltd. and another, ; Holy Health and Educational Society (Regd.) Vs. Delhi Development Authority, ; and 2003 I AD (Delhi) 369 entitled Kesho Lal Kapoor and Ors. v. Sh. Vinod Kapur and Anr., the respondent has tried to get unfair advantage from this Court and by misrepresentation and concealment, is therefore guilty of playing fraud upon this Court as well as on the other side.

20. Normally, the consequence of the setting aside of an ex-parte award would be remand of the matter to the industrial adjudicator who would thereupon be required to adjudicate upon the same in accordance with law. In the instant case, I have found that the claim filed by the workman was fraudulent and the workman had actually claimed the amounts which he had admitted having received in different places before this court. Consequently, there would be no question of remand of such a claim for adjudication and the claims have to be disrejected and dismissed as such claims are fraudulent and have been raised by concealment of material facts.

21. So far as the genuineness and bona fide of the claim set up by the petitioner is concerned, based on the admissions of the workman, it has been held that the same is fraudulent and mala fide. The workman though has admitted receipt of different amounts on different dates, however, he has completely repudiated the settlement on which the petitioner has placed reliance. The workman has also denied signatures on the photocopies of the settlement and the several receipts which have been filed before this court.

Therefore, it is not permissible for this Court to arrive at any conclusion with regard to the plea of the petitioner that the workman had entered into a full and final settlement and that the amounts were received by him in terms of the settlement. This question is consequently left open.

22. In this view of the matter, the order dated 6th November, 1998 is held to be without jurisdiction inasmuch as the respondent has been awarded amounts which actually stood received by him and consequently, the same cannot stand.

Accordingly, this writ petition is allowed.

The order dated 6th November, 1998 is hereby set aside and quashed and the application of the respondent dated 29th November, 1994 is hereby dismissed.

This writ petition is allowed in the above terms with the cost of Rs. 5,000/-.