

**(2007) 12 DEL CK 0027**

**In the Delhi High Court**

**Case No :** WP (C) No. 8776 of 2007 and CM No. 16542 of 2007

Mr. Anil Gupta, Prop. Hindustan Textile Industries

APPELLANT

Vs

The Workman Smt. Shakuntla Devi

RESPONDENT

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**Date of Decision :** 19-12-2007

**Acts Referred:**

**Citation :** (2007) 12 DEL CK 0027

**Hon'ble Judges :** J.M. Malik, J

**Bench :** Single Bench

**Advocate :** R.K. Sharma, for the Appellant; Krishna Mohan and Pirty-in-Person, for the Respondent

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## **Judgement**

J.M. Malik, J.—Smt. Shakuntala Devi, respondent appears in person. Her counsel, Mr. Krishna Mohan, is also present. He states that he will file the vakalatnama on behalf of the respondent today itself.

2. At the request of the counsel for the parties, final arguments are heard. I have perused the Labour Court file. The record reveals that the dispute was referred by the Secretary (Labour), NCT of Delhi to the Labour Court on 13th December, 2002. The respondent filed the statement of claim before the learned Labour Court on 12th November, 2003, and thereafter, notice was ordered to be issued for 6th May, 2004. On 6th May, 2004 the Presiding Officer was on leave and the case was adjourned to 31st August, 2004. On 31st August, 2004, the notice sent to the Management was received back and it was ordered that fresh notice be issued to the workman at the given address through process server/RC/dusty/pvt.courier and by way of affixation as well for 11th October, 2004. No specific order was passed for the Management. On 11th October, 2004, Mr. Satish Chand, the Authorised Representative for the workman was present. None was present for the Management but the notice was served upon the Management by way of affixation. However, since the learned Presiding Officer was on leave, the case was adjourned to 18th October, 2004. On 18th October, 2004 nobody was present for the Management. Process server was summoned to prove his

affixation report for 8th November, 2004. On 8th November, 2004 it was noted that by mistake on 31st August, 2004 notice was served to one workman in place of the Management. Consequently, it was ordered that fresh notice be issued to the Management by process server/RC/dusty/Pvt. Courier and also by way of affixation for 6th January, 2005. On 6th January, 2005 none appeared for the Management and it was ordered that fresh notice be issued to the Management for 5th February, 2005. On 5th February, 2005 none appeared for the Management and it was noted that the Management was served by way of affixation. Notice was issued to the process server to prove the affixation report for 23rd February, 2005. On 23rd February, 2005 the process server did not appear. Bailable warrants in the sum of Rs. 3000/- were issued against the process server for 19th March, 2005. On 19th March, 2005 the statement of process server was recorded.

3. I have perused the statement of process server. It was recorded on a cyclostyled paper. Some blanks were filled in. The order passed by the Labour Court declaring that the Management was proceeded ex parte is also on a cyclostyled paper and some blanks were filled in. The Management was proceeded against ex parte on 19th March, 2005. The ex parte award was passed on 23rd February, 2006.

4. I have perused the report submitted by the process server. It goes to reveal that the process was affixed on a lamp post.

5. It is well said that justice is not to be taken by a storm. She is to be wooed by slow advances. In any event, mere speed is not the test of justice. Fairness is what really justice is. What is the use of quick disposal if such like ex parte orders are to be passed. Such like quickness rather entails procrastination. In this case, the Labour Court went into the subject only skin deep and did not find that without any report on personal service the affixation report simplicities pales into insignificance. Whenever the courts are to proceed ex parte against any person, they should be on their guards, very vigilant, alert and cautious. This is the test of judge's fairness. To my mind, in the eyes of law there is no service upon the respondent. Consequently, I set aside the award dated 23rd February, 2006.

6. Accordingly, the parties are directed to appear before the Labour court on 25th January, 2008, when the Management will file its written statement. No other opportunity shall be granted. The Labour Court is further directed to expedite the hearing of this case. I have already ordered that a sum of Rs. 7000/- as litigation expenses be paid to the workman. Instead of paying the said amount before this Court as already ordered, the said amount be paid to the workman before the Labour Court on 25th January, 2008.

7. Petition and application stand disposed of. The date already fixed in the matter, that is, 8th April, 2008 stands cancelled.

8. A copy of this order be given dusty to counsel for the parties. Labour court

record along with a copy of this order be sent to the Labour Court forthwith.