

(2014) 04 DEL CK 0218

In the Delhi High Court

Case No : W.P. (C) 1011/2014 & CM No. 2062/2014

M/s. Explicit Leathers

APPELLANT

Vs

Arvind Kumar and Others

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2014) 141 FLR 830 : (2014) 3 LLN 101 : (2014) LLR 458

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Sandeep Bajaj, Mr. Siddharth Jain and Mr. Sameer Jain, Advocate for the Appellant; Kartickay Mathur, Mr. S. Gupta, Advocates for R1, Ms. Raavi Birbal, Advocate for R2 in W.P. (C) 1015/2014 and CM No. 2069/2014, Mr. Jayendra, Advocate for R2 in W.P. (C) 1016/2014 and CM No. 2071/2014 and Mr. Shoaib Haider, Advocate for GNCTD in W.P. (C) 1014, 1019 and 1109/2014 and CM No. 2309 and 2077/2014, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—Since these batch of 11 petitions arise from separate but identical orders dated January 18, 2010, ex-parte awards dated January 23, 2010 given by the Labour Court No. V in DID Nos. 904, 894, 897, 896, 901, 891, 905, 903, 899, 895 of 2008 & 893 of 2007 filed by the respondent No. 1 in each of the writ petition (referred as "claimants") before the Labour Court alleging their termination by the petitioner without complying the provisions of Section 25F of the Industrial Disputes Act, 1947 (Act in short) whereby the Labour Court granted their reinstatement with 50% back wages and also against orders dated March 23, 2013 on identical applications filed by the petitioner for setting aside the ex parte awards, with the consent of the counsel for the parties, are being disposed of together by this common order.

Suffice to state that pursuant to filing of claim petitions by the claimants before the Labour Court and thereby raising industrial disputes, written statements to

the claim petitions were filed by the petitioner wherein they have taken the following objections:

(a) The workmen are not employees of the petitioner and the complaint is motivated by malafide.

(b) The list of workmen, as was stated to have been annexed in the complaint, has not been provided to the petitioner.

(c) No notice has ever been received by the petitioner and no inspection was ever conducted at the petitioner's premises.

2. Based on the pleadings of the parties, issues were framed by the Labour Court which are as under:

(a) Whether there exist any employee employer relationship between workmen and management.

(b) Whether workmen were illegally terminated by the management.

(c) Relief.

3. It is noted, after the framing of the issues, the petitioner was proceeded ex-parte on January 18, 2010. Based on the affidavit filed by the claimant, the Labour Court gave the award dated January 23, 2010.

4. The Labour Court relied upon the documents which were exhibited as Ex. WW1/1 to Ex. WW1/6 and further observing that there is nothing on record which shows the testimony of the respondent No. 1 can be disbelieved, granted reinstatement of respondent No. 1 with 50% back wages with continuity of service with the petitioner organization.

5. Pursuant to the awards, the petitioner filed applications for setting aside of the ex-parte awards on February 07, 2011 in each of the Industrial Dispute. In para Nos. 4 to 7, the petitioner has averred as under:

4. That the Hon'ble Court proceeded the said case as ex-parte against the Management as nobody appeared before the Hon'ble Court for and on behalf of the Management.

5. That the Management came to know on 22.01.2011 only that the Management have been proceeded as against ex-parte.

6. That the Counsels were appointed and were authorized to contest the said case, through Mr. S. Mitra, HR Manager and neither Mr. S. Mitra nor their Counsels informed the date to the Management.

7. That absence of the Management before the Hon'ble Court was not intentional but due to unavoidable circumstances. As the Management had no information about the date fixed. The Management only came to know on 22.01.2011 that the case is proceeded as against ex-parte and ex-parte award against the

Management has been passed. When the Management received notice from the Hon"ble Court which was for the next date of hearing in application LCA No. 102/10. The notice was received by the Management only on 22.01.2011.

6. The applications were contested on behalf of the claimants. The Labour Court while dismissing the applications was of the following view:

Ld. Counsel for the workman submitted that the ex-parte award was in execution proceedings and a notice was issued to the management from the SDM office and the management had appeared there even, prior to 22.01.2011. It is observed that on 04.01.2012 permission was sought by Ld. Counsel of the workman to file certified copy of the relevant order sheet from the office of the SDM to show that management was having knowledge that an ex-parte award has been passed against it even prior to 22.01.2011 but the workman has not filed the certified copy of the relevant record.

It is further observed that on 04.01.2012 itself direction was given to the management to produce the original notice which is stated to be received in LCA No. 102/10 by the management on 22.01.2011 to show that the management came to know about the fact that matter has been proceeded ex-parte against it, but the management has also not complied the said direction. It is observed that it was the duty of the management to prove the facts as stated in the application. Since the management has failed prove the fact that it came to the notice of the management only on 22.01.2011 when the management received notice in LCA No. 102/11 therefore, it seems that it is not in the interest of justice application filed by the management is dismissed and disposed off accordingly.

7. Learned counsel for the petitioner would urge that the petitioner did not have any information regarding the passing of the award because of collusion of Mr. S. Mitra, Manager (HR) with the claimants. According to the petitioner, Mr. S. Mitra had subsequently left the company without any intimation. It is also alleged that the claimants deliberately did not provide the correct address of the petitioner and in all probability it was sent to the address mentioned which never belonged to the petitioner. It is also the stand of the petitioner that the ex-parte awards came to the notice of the petitioner only when notice in LCA No. 102/10 was received by the petitioner on January 22, 2011. He would state that the claimants before the Labour Court had failed to discharge the onus of proving the employer employee relationship between the petitioner and themselves. He would further state that none of the notices sent by them before they raised the industrial disputes were sent to the petitioner. He has referred to pages 34 to 44 of the paper book. He relied upon the judgment of the Supreme Court in the case reported as R.M. Yellatti Vs. The Assistant Executive Engineer, in support of his contentions.

8. On the other hand, learned counsel for the claimants would urge that the only ground urged by the petitioner in these petitions is totally a false inasmuch as

the petitioner had failed to produce the relevant notice which is stated to have been received in LCA No. 102/2010 on January 22, 2011. In other words, the very ground on which it had sought the setting aside of the ex-parte award could not be proved and the Labour Court had rightly rejected the application.

9. Having heard the learned counsel for the parties, insofar as the submission of learned counsel for the petitioner that the petitioner went unrepresented because of collusion between Mr. S. Mitra, the then Manager (HR) of the petitioner organization with the claimants, I find, no such averment made in the applications for setting aside the ex-parte order, except stating "that the counsels were appointed and were authorized to contest the said case through Mr. S. Mitra, Manager (HR) and neither Mr. S. Mitra nor their counsels informed the date to the management". The plea is clearly an afterthought and such a plea cannot be accepted. Insofar as the contention that the petitioner came to know about the passing of the ex parte award only when a notice in LCA No. 102/2010 was received by the petitioner on January 22, 2011 is concerned, the same also could not be proved by the petitioner before the Labour Court. The relevant observation of the Labour Court has already been reproduced in para 7 above. This ground is not only an afterthought but a false one. Lastly, on the plea that none of the documents relied upon by the claimants in support of their case has been addressed to the petitioner is concerned, I note that the communication dated March 26, 2007 Annexure B at Page 35 was addressed to the petitioner company at A-279, OIA (which meant Okhla Industrial Area), Phase-I, New Delhi wherein the Union has complained to the petitioner of the illegal termination of one of the claimants namely Mr. Arvind Kumar w.e.f. March 26, 2007 and called upon the petitioner to reinstate him with full back wages. It appears that no reply has been sent by the petitioner to this notice given by the Union. Surely, if the petitioner disputes the relationship of employer-employee between the claimants and the petitioner, it should have replied to such a notice. In the absence of any reply, surely, the contents have not been controverted. Be that as it may, it is the case of the petitioner that no demand notice was sent by the Union complaining the termination of the claimants and requesting for their reinstatement, which is falsified. Insofar as the reliance on behalf of the petitioner on the case of R.M. Yellatti (supra) is concerned, the ratio of the said judgment is not applicable in the facts of this case for the reason that in the present case, the claimants could able to discharge the onus of proving the employer-employee relationship inasmuch they have placed before the Labour Court the communications sent on their behalf to the petitioner, complaining about the termination and requesting the petitioner to reinstate the claimants. No other evidence like appointment letters, wage register, being available with the claimants the same could not be produced. There is some basis for the Labour Court to arrive at the conclusion, which in this Court's view is not, at least, a perverse finding.

10. In the last, the learned counsel for the petitioner has sought the remand of the cases back to the Labour Court after setting the ex parte awards, subject to

such conditions this Court may impose. I may state here that such a proposal was put to the learned counsel for claimants, who, on instructions, has refused to accept. In view of the above conclusion, I do not think that the petitioner has made out any case for interference in the impugned awards. The writ petitions are dismissed with no order as to costs.

CM Nos. 2062, 2064, 2067, 2069, 2071, 2073, 2075, 2077, 2079, 2309 & 2311 of 2014

In view of the dismissal of the writ petitions, the present applications are also dismissed.