

(2015) 01 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) 4341/2008

New Age Advertising and Printers

APPELLANT

Vs

Rajinder Kumar

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 27

Citation : (2015) 01 DEL CK 0191

Hon'ble Judges : Deepa Sharma, J.

Bench : Single Bench

Advocate : Bhavna Dhami, Amicus Curiae, for the Appellant

Final Decision : Dismissed

Judgement

Deepa Sharma, J.—Vide the present writ petition the petitioner has challenged the ex-parte award dated 22.01.2003 passed by the labour No.III, Karkardooma Courts, Delhi in I.D. No.494/1998 in the matter between the management of M/s. New Age Advertising and Printers and its workman Rajender Kumar.

2. The case of the petitioner is that the management was never served at any stage of raising of the dispute and he was not aware of the pendency of any industrial dispute before the concerned labour court. It is submitted that the management had continued to live at the same address but still was not served at any stage. It is further submitted that the award is based on misconceived facts and is bad in law. On these facts it is prayed that the award be set aside.

3. The petition is contested by the respondent/workman. It is submitted that the present petition is liable to be dismissed as the petitioner has not disclosed true and material facts before this court and has also not come with clean hands. It is submitted that the petitioner had filed an application dated 17.01.2008 before Mr. Harish Dudani, Presiding Officer-II, Labour Court, Delhi for setting aside the award. Reply had been filed by the workman/respondent. Vide order dated

26.05.2008, the application of the petitioner for setting aside the ex-parte award was dismissed. The said order has not been challenged by the petitioner. It is submitted that this petition is therefore not maintainable. It is also submitted that the award has been implemented and the petitioner had handed over a cheque of Rs.20,000/- to the S.D.M. vide letter dated 28.12.2007 and also agreed to make payment of balance amount within two months. It is further submitted that the Petition is barred by Limitation. It is further submitted that the proceedings before the Trial court continued from 1998 to 2003 and within these five years the Petitioner had intentionally and deliberately opted not to appear and contest the matter. It was given several opportunities. Further it had the knowledge of the case and had been closely watching the proceedings and had intentionally not appeared with the sole intention to linger on the matter. The Petitioner/management was duly served again and again of the summons of the Trial Court and they refused to take the summons on 16.03.2001, 17.03.2001, 19.03.2001. The summons were served by affixation on 28.12.98 and 19.09.2000. It is submitted that the award is based on the material produced by the workman/respondent before the Trial court and thus is fair and reasonable. It is further contended that since the award does not suffered with any error, the same cannot be set aside. Reliance is placed on Sadhu Ram Vs. Delhi Transport Corporation, , Harbans Lal Vs. Jagmohan Saran, and Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, . It is submitted that the Writ Petition is liable to be dismissed.

4. I have heard the arguments and perused the record.

5. In the present case, from the uncontroverted facts, it is apparent that the respondent was the employee of the petitioner. His services were terminated by the petitioner. He raised an industrial dispute which was registered as ID 494/98. The award was been passed on 22.01.2003.

6. The petitioner has challenged the award on the ground that it is misconceived and bad in law. The Petitioner had concealed the material facts from the knowledge of this court by not disclosing in the Writ Petition that it had filed an application dated 17.01.2008 before Presiding Officer, Labour Court-II, Karkardooma Courts, for setting aside the Ex-parte award dated 22.01.2003 and the same was dismissed by the Ld. Trial court vide its order dated 26.05.2008. The Petitioner has also not challenged this order dated 26.05.2008.

7. There is inordinate delay of more than five years in filing the present writ petition and no reasonable explanation is on record for this delay.

8. From the perusal of the Trial court record it is apparent that the processes were sent to the petitioner on several dates at the same address which has been given by the petitioner in the present writ petition. Processes were also sent by registered post and the reports clearly show that initially the petitioner had been avoiding the service and subsequently it refused to take the summons. Summons were also reported to be served by way of affixation. The Court however took

cognizance of the due service on the summons of the refusal of the Petitioner to receive summons of court sent by registered post for 25.01.2001. The courts are within their rights to do so in view of Section 27 of the General Clauses Act.

9. Section 27 of General Clauses Act, 1897 reads as under:

"Meaning of service by post.-Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, preparing and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post." 10. It therefore is clear that where the letter bearing the correct address of the addressee is sent, the presumption is that it would have been delivered in the ordinary course of business to the addressee. The contention of the petitioner that the service of the summons upon it was not accordingly to law, has no force. The law puts burden upon him to prove otherwise. The petitioner has not placed any evidence on record to show service of registered letter could not have been done on it in ordinary course. It does not dispute the correctness of its address on the post. On perusal it is clear that it is the same address which the petitioner has given in present petition. Thus it has failed to discharge the burden that the summons of the court could never have been served upon him in ordinary course. Its petition is hopelessly delayed. The delay is of about five years while he could have challenged the ex-parte award within the period of 30 days, from the date of publication of the award. Its application before the trial court for setting aside the ex-parte award was also delayed by about five years. There is a final order of competent court whereby its plea to set aside the ex-parte order was rejected and the order is final and binding, since not being challenged by petitioner. In the present writ petition the petitioner is silent about the said order. There is not even a whisper of that order in the present petition. The petitioner has thus concealed from this court the existence of any such order.

11. The challenge is also on the ground that workman has himself resigned from job after submitting his apology for his conduct. No such contention was raised before the tribunal. Order of tribunal is based on evidences produced before it. In the Calcutta Port Shramik Union" case (supra) relied upon by the respondent, the Supreme Court has clearly held in para 10 that the court are refrained from interfering with an award on flimsy grounds. Para 10 of the said judgment is reproduced as under:

"10. The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all

such cases an attempt should be made by courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hypertechnical grounds. Unfortunately the orders of the Single Judge and the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis. " 12. In *Sadhu Ram*" case (supra), three judges of the Supreme Court has discussed the jurisdiction of this court under Article 226 of the Constitution and has held as under:

"3. We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those Tribunals...." 13. In *Harbans Lal*" case (supra), the Supreme Court has clearly held that the High Court cannot re-appreciate the evidence in exercise of its jurisdiction under Article 226 in a writ of Certiorari. In that case the Prescribed Authority as well as the trial court had concurrently reached to the conclusion on the basis of evidence before it and that one "M" was sitting in the vegetable shop of the appellant-tenant on behalf of the appellant. In the writ petition under Article 226 for a writ of certiorari which was filed by respondent/landlord, the high court declined to accept the appellant's case that he was carrying on brick kiln and cold storage business and held that the appellant was unable to establish any legal relationship of agency between himself and "M" who was occupying the shop within the meaning of Section 12(1)(b) of U.P. Act and the high court had also held that the property must be deemed to be vacant and it remanded the case to the prescribed authority for passing orders on the respondent's application for release of the property. The said order of the High court was challenged before the Supreme Court and the Supreme Court in this case has clearly held "We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence".

14. As per the above discussion, it is clear that in exercise of its powers under Section 226 of the Constitution, the courts are not to act as an appellate court. An award can only be set aside only if it is based on no evidence or contrary to any substantive law. It can also be set aside when it is violating principles of natural justice.

15. The present award does not fall in any of these categories. The award is based on the evidence produced before the trial court. The trial court has given ample opportunities to the petitioner to appear before it and contest the claim of the worker by issuing summons on the various dates to the petitioner and proceeded ex-parte only when it is satisfied that the respondent was not interested. It, therefore, cannot be said that the award is in violation of the

principles of natural justice or that there was no evidence before the tribunal to pass this award or that award is contrary to any substantive law.

16. For the above reasons, I hereby dismiss the petition.