

(2003) 03 DEL CK 0122
In the Delhi High Court
Case No : Civil Writ No. 1440 of 2000

Nice Rubber

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Citation : (2003) 5 AD 412 : (2003) 104 DLT 585 : (2003) 67 DRJ 688 : (2003) 3 LLJ 322

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : M.K. Awtaney, for the Appellant; D.K. Sharma, for the Respondent No. 2, for the Respondent

Judgement

S.K. Mahajan, J.—Rule.

2. With the consent of the parties, the matter has been heard and disposed of by this order.

3. The short point involved in this case is whether the Labour Court after the Award has become enforceable has jurisdiction to entertain an application for setting aside the Award passed ex-parte against the management. A few facts relevant for deciding this petition are:

4. A dispute being raised by the respondent workman the matter was referred u/s 10 of the Industrial Disputes Act for adjudication to the Labour Court with the following terms of reference.

"Whether the services of Sh. Ram Bahadur Singh have been terminated illegally and or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?"

5. During the pendency of proceedings before the Labour Court the management was proceeded ex-parte and on 24th August, 1999, the Labour Court passed an ex-parte Award directing reinstatement of the workman with 50% back-wages.

On coming to know of the passing of the ex-parte award the management on 21st February, 2000 filed an application for setting aside the same. The application was dismissed by the Labour Court by order dated 23rd February, 2000 after holding that on coming into force of the Award after 30 days of the publication of the same, the Labour Court becomes functus officio and cannot entertain an application for setting aside the ex-parte award. This order has now been challenged by the petitioner by filing the present writ petition.

6. The question raised in this petition is no longer res-Integra in as much as the Supreme Court in a case reported as Anil Sood Vs. Presiding Officer, Labour Court II, has held that Section 11 of the Industrial Disputes Act conferred ample powers upon the Tribunal to devise its own procedure in the interest of justice which includes power which bring out the adjudication of an existing industrial dispute. Sub-section (1) and (3) of Section 11 of the Act thereby indicate the difference between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the extent of powers of Civil Court and clearly set out. It was held that the aspect that the party against whom award is to be made, due opportunity to defend has to be given is a matter of procedure and not that of power in the sense in which the language is adopted in Section 11. When matters are referred to the Tribunal or Court, they have to be decided objectively and the Tribunals/Courts have to exercise their discretion in a judicial manner without arbitrariness by following the principles of law and rules of natural justice. The power to proceed ex-parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity, Therefore, the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex-parte award. It was held that if that is the position in law, the observations of the High Court and the Tribunal that the Labour Court had become functus officio after making the award, though ex-parte, were erroneous.

7. In view of the aforesaid judgment of the Supreme Court, it is clear that even after passing an ex-parte award the Labour Court had the jurisdiction to set aside the same in case sufficient cause was shown by the party against whom the award was passed for his absence before the Court. The order of the Labour Court, Therefore, holding that the Court had become functus officio after the award had become enforceable is clearly erroneous and cannot be sustained. I, accordingly, make the rule absolute, quash the impugned order dated 23rd February, 2000 and allow the writ petition. The matter is remanded to the Labour Court with a direction to decide the application of the petitioner for setting aside the ex-parte award on its merits. In the facts of the case I leave the parties to bear their own cost. The parties are directed to appear before the Labour Court on 7.4.2003.