
(1998) 11 RAJ CK 0035
In the Rajasthan High Court
Case No : C.W.P. No. 3979 of 1998

Prabhu Das

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2), 17

Citation : (1999) 2 LLJ 123 : (1999) 1 RLW 280

Hon'ble Judges : B.J. Sethna, J

Bench : Single Bench

Advocate : N.K. Vyas, for the Appellant;

Final Decision : Dismissed

Judgement

Sethna, J.—The petitioner is an employer and respondent No. 3 Shri Mana Ram was working with the petitioner as his truck driver. He submitted an application u/s 15(2) of Payment of Wages Act, 1936 before the authority under the Payment of Wages Act, Pali on July 26, 1993 inter alia contending that he was not paid wages of Rs. 12,600/-. Notice on that application was duly served upon the petitioner employer and even reply (Annex. 2) was filed before the authority not only that he also engaged a counsel to defend his case. Thereafter, issues were framed by the authority on November 29, 1993 and, then, the case was kept for recording evidence of the parties from December 18, 1993 to December 20, 1995 on about 25 different dates. The evidence of the employee was recorded only on December 27, 1995 as per the order sheet (Annex. 3). Nobody was appearing for the petitioner employer before the authority, therefore, on April 21, 1995 fresh notice was ordered to be issued and it was kept on May 30, 1995 and then on July 18, 1995. By that time another Presiding Officer came, who passed the order ex parte proceedings against the petitioner on July 18, 1995 and after recording evidence of the employee on December 27, 1995 the ex parte decree/order was passed on January 3, 1996 for the sum of Rs. 12,225/- (Annex. 4) and later on notice dated May 15, 1996 (Annex. 5) was issued for payment of said

amount.

2. It is the case of present petitioner-employer that he came to know about the ex parte order dated January 3, 1996 and notice dated May 15, 1996 only on October 4, 1996, therefore, when S.D.O. Bali came for recovery of said amount he immediately contacted his counsel Shri Bhagirath Chandora on October 23, 1996 and on the same date he applied for certified copy of the ex parte order dated January 3, 1996 and on receiving the same, an application was made to set aside the ex parte order on November 7, 1996. On that application, notices were ordered to be issued and after hearing the parties his application was rejected by an order dated December 20, 1996 (Annex. 7). That order was challenged by way of appeal u/s 17 of the Act before the appellate authority which was also dismissed. Aggrieved of the same the petitioner has filed this writ petition under Articles 226/227 of the Constitution of India.

3. Learned counsel Shri Vyas for the petitioner relying upon the Apex Court Judgment in case of Malkiat Singh v. Joginder Singh, reported in AIR 1998 SC 258 submitted that the authority and the appellate authority both committed grave error in not setting aside the ex parte decree/order. In para No. 11 of the writ petition an averment is made that the petitioner was not in fault and it was his counsel who did not represent his case properly before the authority and did not inform him about the latest position of the case. He, therefore submits that the case on hand is similar to the case of Malkiat Singh (supra) therefore, the impugned orders passed by the authority as well as by the appellate authority be set aside and the matter be remanded to the authority under the Payment of Wages Act.

4. In case of Malkiat Singh (supra) the appellants (accused) were tried for murder of one Harpal Singh and on conviction, they were sentenced to suffer life imprisonment and to pay fine of Rs. 1,000/- by the trial Court on April 1, 1985. The respondent in that case filed suit only on August 16, 1989 (i.e. after almost four years) before the Civil Court claiming damages from the appellants to the tune of Rs. 1 lakh for depriving of the income to the family members which they used to get from deceased Harpal Singh. The suit was contested by the appellants by filing written statement and engaging counsel to defend them in suit. Thereafter, issues were also framed and two witnesses were also examined and cross examined. However, on November 18, 1991 counsel for the appellants pleaded "no instructions" before the Court and as result of the same the case was proceeded ex parte and on February 8, 1992 the trial Court passed an ex parte decree against the appellants. On an enquiry from their counsel the appellants came to know on June 6, 1992 that he had already pleaded "no instructions", therefore, the case was decided ex parte on February 8, 1992. The appellants then immediately engaged another counsel on June 10, 1992 within four months and filed application under Order 1, Rule 13, C. P. C. for setting aside the ex parte order dated November 18, 1991 and ex parte judgment and decree dated February 8, 1992. It is pertinent to note that while that application

was pending adjudication, the appeal filed by the appellants against conviction and sentence was heard by the Apex Court on March 7, 1995 and the order of conviction and sentence was set aside. Later on, on January 21, 1996 the trial Court dismissed the application. Against that the appeal filed before the learned Dist. Judge was also dismissed on October 18, 1996 and even the High Court dismissed the revision filed by them in limine on December 13, 1996. Under the circumstances, the appeal was filed by the appellants before the Apex Court.

5. The undisputed facts before the Apex Court in Malkiat Singh's case (supra) were that the appellant had engaged a counsel to defend them in civil suit who pleaded "no instructions" and the Court without issuing notices to the appellants proceeded ex parte and passed the ex parte decree/judgment. On facts of that case, the Apex Court found that the appellants were neither careless nor negligent in defending the case and admittedly no notice was issued to them after their counsel pleaded "no instructions". On peculiar facts and circumstances of the case, the Apex Court held that, "the appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer."

6. Now coming to the facts of this case, it is clear that respondent No. 3 who was working with the petitioner employer as a truck driver was denied backwages for several months which would come to Rs. 12,600. He, therefore, filed an application before the authority under the Payment of Wages Act way back in 1993 and notices were duly served upon the petitioner and not only that the reply was also filed and counsel was also engaged. Almost after two years i.e. on July 18, 1995, the authority was compelled to pass the order of ex parte proceedings in the case as neither the petitioner nor his counsel was remaining present. Evidence of the employee came to be recorded only on December 27, 1995 and ultimately ex parte order came to be passed on January 3, 1996. It is no doubt true that in this petition in para 11 at page 8 an averment is made that the petitioner was not at fault and it was his counsel who did not represent his case properly and not informed him about the latest position. It may be stated that when an application (Annex. 6) dated November 7, 1996 was filed before the authority this statement was never made that, "it was because of his counsel's negligence the petitioner is made to suffer". In this case the petitioner has not given any notice to his counsel, who failed to either properly represent his case or failed to inform him and no complaint is made to the Bar Council about his such misconduct. It is under these circumstances, if the authority under the Payment of Wages Act is not satisfied to set aside the ex parte decree and the appellate Court also concurred with that view then this Court would not like to interfere with such orders passed by the authority below in exercise of powers under Articles 226/227 of the Constitution. Before parting I must state that the poor employee, who has been denied wages way back in 1993 has not got a penny even after five years. The employer can have the luxury to file litigation so as to deny the due and legitimate amount of his poor employee. In my humble opinion, the above judgment of the Apex Court in Malkiat Singh's case (supra) has no application to the facts of this case. In this case the

authority as well as the appellate authority have assigned cogent and sound reasons for not setting aside the ex parte order and judgment. Thus, no error much less, error of law or jurisdictional error is committed by them which may call for interference by this Court under its extraordinary jurisdiction under Articles 226/227 of the Constitution. As held by the Supreme Court in Mohd. Yunus Vs. Mohd. Mustaqim and Others, that even an error of law cannot be corrected by this Court under Article 227 of the Constitution. In this case, as stated earlier, no error apparent on the face of the record or error of law or jurisdictional error is committed by the Courts below.

7. In view of the above discussion, this writ petition fails and is hereby dismissed.