

(2010) 10 DEL CK 0078

In the Delhi High Court

Case No : Writ Petition (C) No. 3594 of 1996

Preetam Singh and Sons

APPELLANT

Vs

Sh. Chotey Lal and Others

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 44

Citation : (2010) 174 DLT 359 : (2011) 128 FLR 176 : (2011) 2 LLJ 688 :
(2011) LLR 242 : (2011) 161 PLR 12

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Judgement

Valmiki J Mehta, J.—This case is fixed for regular hearing, but no one has appeared on behalf of the parties although it is 12.30 PM. Respondent No. 1 workman was served of this petition after admission by means of publication and still he has not appeared. I have therefore perused the records and I am proceeding to disposing of the petition.

2. Challenge has been laid by this petition under Article 226 of the Constitution of India for setting aside the ex parte Award dated 1.8.1994 and the order dated 13.9.1996 dismissing the application under Order 9 Rule 13 CPC on behalf of the petitioner on the ground that the Labour Court had no jurisdiction to entertain such an application after 30 days of the publication of the Award.

3. The facts of the case are that the respondent No. 1 was under the employment of the petitioner sole proprietor concern and he resigned on 26.9.1991. The application for resignation is dated 19.9.1991 and is filed as Annexure P-1. Resignation letter and voucher of full and final settlement signed by the workman respondent No. 1 are annexed as Annexures P-2 and P-3.

4. In spite of the full and final settlement, the workman still approached the

Labour Court and when the complete facts were not brought to the notice to the Labour Court, the petition was dismissed as per order dated 22.4.1993 which reads as under:

ORDER 22.4.93.

Pt. Shri Balbir Singh for the Mgt. Shri Parey Lal Srivastava for workman. The management has filed a photo copies of the settlement of the receipt of the amount paid to the workman. Statement to be recorded.

Statement of Sh. Parey Lal Srivastava, A.R. of the workman.

The workman has settled his case with the management in full and final settlement. Now nothing is left to adjudicate in this case. The case be dismissed as satisfied.

RO AC. Sd/- L.C.II

In view of the above statement of representative of the workman the case is dismissed as settled. File be consigned to record room.

Sd/-

POLC-II

22.4.93.

5. It appears that the workman had filed another case and this was pursued by him and Award passed by the presiding officer Labour Court ordering reinstatement of the workman with back wages. The Award dated 1.8.1994 does not take note of the aforesaid order dated 22.4.1993 which records that the workman has entered into a full and final settlement with the management and nothing remained to be adjudicated as the case had been satisfied.

6. The case of the petitioner further is that it received another notice from the Labour Court in case No. 429/1992 where it was told to him by the authorized representatives of the workman that in view of the settlement, the case would be withdrawn and thereafter no one appeared for the petitioner in the case. On 2.9.1996, a person from the Collectors Office, Recovery Cell, left a message asking the petitioner to deposit a sum of Rs. 40,120/-. The petitioner thereafter inspected the court file and found that the second case was not withdrawn by the authorized representative of the workman and an exparte order was thereafter passed overlooking the previous order dated 22.4.1993.

7. The petitioner has also stated in the petition that inspection of the file of the court shows that there is a difference in the signatures of the workman as the signatures of the workman on the statement of the claim in the second case are entirely different from those of the affidavit by way of evidence.

8. The first issue to be decided by this Court is whether the application under Order 9 Rule 13 has been rightly dismissed by the order dated 13.9.1996 holding

the court had no jurisdiction. This issue is no longer *res integra* and the Supreme Court in the case of *Anil Sood Vs. Presiding Officer, Labour Court II*, has held that the Industrial Tribunal/Labour Court has jurisdiction to decide an application under Order 9 Rule 13 CPC and it cannot be said that the Industrial Tribunal / Labour Court has no jurisdiction after 30 days of publication of the Award on the ground that it is *functus officio*. The decision in the case of *Anil Sood (supra)* has also been confirmed in the cases of *Radhakrishna Mani Tripathi Vs. L.H. Patel and Another*, and *Kendriya Vidhyalaya Sangathan v. R.V. Palde and Ors.* (2008) 17 SCC 683. It is quite clear there therefore that the order dated 13.9.1996 dismissing the application under Order 9 Rule 13 CPC which was moved within 30 days from the date of the knowledge of the award has been wrongly dismissed on the ground that the Labour Court had no jurisdiction.

9. Ordinarily, I would have remanded the case back to the Labour Court for a fresh decision on merits, however, I find that the present is a fit case for exercising jurisdiction under Article 226 and 227 of the Constitution of India on account of fraud having been played by the respondent No. 1 workman on the petitioner. The fraud is an *ex facie* fraud because in one case namely LCA 615/1992, it was clearly recorded that the workman has settled his case with the management in full and final settlement and therefore there is nothing left to adjudicate in the case which was dismissed as satisfied. In spite of this, the respondent No. 1 pursued another case and in which *ex parte* Award was passed on 1.8.1994. This clearly amounts to abuse of the process of law and overreaching the court. An act of fraud can create no rights. A fraud vitiates everything and Award on the basis of the same is nullity-vide Section 44 of The Evidence Act, 1872. No rights are therefore created in favour of respondent No. 1 workman by virtue of the Award dated 1.8.1994 in view of the settlement between the parties already recorded on 22.4.1993 in LCA 615/1992.

10. I have already noticed that no one appeared for the respondent No. 1 workman after this petition was admitted and the respondent No. 1 had to be thereafter served by publication.

11. In view of the aforesaid, I accept the petition on account of illegality in dismissing the application under Order 9 Rule 13 CPC and also the *ex facie* perversity and fraud as played by the respondent No. 1 upon the petitioner in seeking an Award in spite of full and final settlement amount which he received at the time of his resignation and also so duly confirmed once again in LCA 615/1992 on 22.4.1993.

12. The petition is therefore accepted and the Award dated 1.8.1994 is therefore set aside leaving the parties to bear their own costs.

The petition stands disposed of accordingly.