

(1999) 01 MAD CK 0065

In the Madras High Court

Case No : Writ Petition No. 2412 of 1990

Protos Engineering (Private) Ltd.

APPELLANT

Vs

First Additional Labour Court and Another

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Tamil Nadu Industrial Disputes Rules, 1958 — Rule 48(2), 48(3)

Citation : (2000) 3 LLJ 116

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Judgement

S. Jagadeesan, J.—The petitioner has filed this writ petition, challenging the order rejecting its application for condoning the delay of 17 days in filing the petition for setting aside the ex parte order passed by the first respondent-Labour Court.

2. The second respondent herein raised an industrial dispute in I.D. No. 130 of 1983, against the decision of the petitioner for limiting the maximum dearness allowance payable to the employee as per their notice issued u/s 9-A of the Industrial Disputes Act, 1947. After several hearings, the petitioner was set ex parte on September 19, 1988. Thereafter, the matter was adjourned to October 11, 1988 and October 26, 1988 and finally the award was passed on October (sic) 1988. The petitioner filed I.A. No. 960 of 1988, on October 21, 1988 for setting aside the petition ex parte, dated September 19, 1988. The said petition was returned on the ground that supporting affidavit was not filed along with the petition. Thereafter, the application was represented on November 1, 1988 with a petition in I.A. No. 959 of 1988 to condone the delay of 17 days in filing the petition for setting aside the order of setting the petitioner ex parte. The said application to condone the delay was dismissed by the Labour Court, as against which the present writ petition has been filed.

3. Sri Sanjay Mohan, learned counsel for the petitioner contended that the petitioner, was set ex parte on September 19, 1988. The petition for setting

aside the said order was filed on October 21, 1988 and the same was returned. Hence the observation of the Labour Court that the petitioner did not take any steps earlier to November 1988, is not correct and virtually the Labour Court has proceeded on the basis that the petitioner did not take any steps earlier to November 11, 1988. Further, it is contended that the delay of 17 days had been properly explained by the petitioner and the Labour Court has simply rejected the same without considering the explanation of the petitioner for the delay.

4. On the contrary, Sri S. Vaidyanathan, learned counsel for the second respondent, contended that the petitioner was set ex parte as early as September 19, 1988, and the petition for setting aside the ex parte order ought to have been filed within 15 days as per Rule 48(2) of the Tamil Nadu Industrial Disputes Rules, 1958 (hereinafter referred to as the Rules). Further Rule 48(3) of the Rules envisages that an application under Sub-rule (2) shall be supported by an affidavit. Admittedly the petitioner did not file any supporting affidavit and hence the Labour Court has rightly returned the papers. There is absolutely no explanation for the delay of 17 days and hence the Labour Court has rightly rejected the petition for condoning the delay. Further, the petitioner, without waiting for the disposal of the writ petition, could have invoked Section 19(6) of the Act, by issuing a notice of cancellation and raised an industrial dispute afresh. Hence, there is absolutely no need to entertain the present dispute on merits.

5. I have considered the contentions of both the learned counsel. I have also perused the records of the Labour Court. From the records I find that the application under Rule 48(2) of the Rules had been filed on November 1, 1988 with an affidavit. The records do not contain the papers relating to I.A. No. 960 of 1988. There is no dispute with regard to the fact that the petitioner was set ex parte on September 19, 1988, and the matter was adjourned to October 11, 1988, and thereafter to October 26, 1988. Ex parte award was passed by the Labour Court on October 31, 1988. As per the records, the application for condoning the delay of 17 days has been filed on November 1, 1988. It is not clear as to how representation is being made that the application was filed only on November 11, 1988. Perhaps this may be due to the date mentioned in the said petition as November 11, 1988 by the counsel, who signed the petition. The Court seal bears the date November 1, 1988 both in the petition as well as in the supporting affidavit filed by the petitioner. Hence, I have to take that the petition for condoning the delay with the (sic) has been filed on November 1, 1988.

6. It is the contention of the learned counsel for the second respondent that the petition for setting aside the ex parte order has to be filed within 15 days from the date of the said order as contemplated under Rule 48(2) of the Rules. As the petition for setting aside the ex parte order was not filed within 15 days, the petition for condoning the delay had been filed and the petitioner did not give any sufficient cause for such delay. Rule 48 of the rules runs as follows:

"48. Ex parte proceedings. - (1) If, without showing sufficient cause any party to

proceedings before the Board, Court, Labour Court or Tribunal or an arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or the arbitrator may proceed as if the party had duly attended or had been represented.

(2) The Board, Court, Labour Court, or Tribunal or an arbitrator may, for sufficient cause, set aside, after notice to the Opposite party, the ex parte decision either wholly or in part, on an application made within 15 days of the ex parte decision:

Provided that an application may be admitted after the said period of 15 days, if the applicant satisfies the Board, Court, Labour Court or Tribunal or arbitrator, as the case may be, that he had sufficient cause for not preferring the application within that period.

(3) An application under Sub-rule (2) shall be supported by an affidavit."

From a reading of Sub-rule (1) of Rule 48 referred to above, it is clear that if any party to a proceeding fails to attend the Labour Court, the Labour Court may proceed as if the party had duly attended or had been represented. This Sub-rule does not contemplate setting a party ex parte, for his absence. Without setting a party ex parte the Labour Court has to proceed with the matter, as if the party is present in Court, and pass final order.

7. Under Sub-rule (2) of Rule 48, the Court is empowered to set aside the ex parte decision in full or in part after notice to the opposite party for sufficient cause on an application made within 15 days of the ex parte decision. Hence this rule prescribes limitation of fifteen days from the date of ex parte decision. The word "decision" necessarily means deciding the rights of parties. If setting ex parte itself is a decision, there is no need for the Court to proceed further and pass an ex parte award. In this case, admittedly, an ex parte award was passed on October 31, 1988, and only from that date the limitation starts.

8. When Rule 48(2) refers to the power of the Court for setting aside the ex parte decision in part or in full, it can refer only to the final decision of the Court and not the order setting ex parte of the petitioner, i.e., order, dated September 19, 1988. From the records, it is clear that the application for condoning the delay had been filed on November 1, 1988, on which date, absolutely there is no delay in filing the application for setting aside the ex parte decision, dated October 31, 1988. Hence filing of the application under the proviso to Rule 48(2) itself was a misconception. The first respondent Labour Court also proceeded on the basis that the case was posted on October 26 and 31, 1988, but the petitioner did not take any steps to set aside the order of setting it exparte. The first respondent Labour Court has also proceeded erroneously, as if the petitioner has failed to take steps for setting aside the order of setting ex parte.

9. Admittedly, the petitioner has filed the application for setting aside the ex parte order on September 19, 1988. Even assuming that the application is not in

conformity with Sub-rule (3) of Rule 48 of the Rules, the application had been returned and the same was represented. The first respondent Labour Court did not make any reference to the said application filed by the petitioner for setting aside the order of setting the petitioner ex parte. As the said petition was returned for non-compliance of Sub-rule (3) of Rule 48, it is the contention of learned counsel or the petitioner that the papers were represented along with another application for condonation of delay in filing the application for setting aside the ex parte order. As I have already held when the application for setting aside the ex parte order is to be filed within fifteen days of the final ex parte decision, the application filed by the petitioner on the date of representation, i.e., on November 1, 1988, as per record as well as on November 11, 1988 as per the statement of both counsel is well within the period of limitation prescribed under Rule 48(2) of the Rules, as the final ex parte decision is, dated October 31, 1988. Hence the impugned order of the first respondent Labour Court, cannot be sustained and the same is liable to be set aside.

10. The impugned order of the Labour Court is, therefore, set aside. Since already the application for setting aside the ex parte order has been numbered as I.A. No. 960 of 1988, the Labour Court is directed to dispose of the said application, on merits. The writ petition is ordered accordingly. No costs.