
(2008) 03 DEL CK 0020

In the Delhi High Court

Case No : LPA 136 of 2008

Ramco Rolls

APPELLANT

Vs

Govt. of NCT of Delhi and Another

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2008) 103 DRJ 422

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Reva Khetrapal, J

Bench : Division Bench

Advocate : M.P. Sinha, for the Appellant; Zubeda Begum, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 30th January, 2008 whereby the writ petition filed by the appellant was dismissed holding that no reasonable ground is made out for setting aside the ex parte award dated 21st September, 2002.

2. The termination of the workman, who is one of the respondents herein, was challenged by seeking a reference. The appropriate Government at the instance of the workman made a reference to the Labour Court on the following terms:

Whether Shri Prem Kumar has abandoned his job or services or services 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.

3. The authorized representative of the appellant entered appearance before the Labour Court and filed a written statement to the claim filed by the workman. Issues were also framed on 27th January, 1999 in the presence of the representatives of the parties and the matter was adjourned for 18th August, 1999 and thereafter it was adjourned to 19th May, 2000. Thereafter the matter was adjourned from time to time. When the matter was listed on 26th February,

2001, none appeared on behalf of the appellant due to which the matter was adjourned to 13th June, 2001 and thereafter to 1st October, 2001. The matter was again adjourned to 3rd October, 2001. On all the aforesaid dates, none appeared on behalf of the management - appellant. Due to the aforesaid position, the Labour Court had no other option but to order for proceeding ex parte as against the management - appellant and ultimately ex parte award came to be passed on 21st September, 2002. It is thus established from the records that from 18th of August, 1999 onwards none appeared on behalf of the management - appellant till the ex parte award was passed on 21st September, 2002. However, after passing of the aforesaid award, an application was filed by the appellant for the first time on 17th March, 2003, which was filed under the provisions of Order IX Rule 13 of the CPC seeking for setting aside the ex parte award passed against the management - appellant. The said application was taken up for consideration. The Labour Court, however, dismissed the said application relying on the decisions of this Court in Parminder Singh and Anr. v. Virender Pal Singh Jolly reported as 2004 IV AD (Delhi) 545 and Badri Bhagat Jhandewalan Temple Society and Others Vs. Delhi Development Authority, holding that no efforts were made either by the authorized representative of the management or the management itself to know about the status of the case, and consequently no sufficient cause was made out for setting aside the ex parte award. The Labour Court was of the considered opinion that the ratio of the aforesaid decisions squarely applied to the facts of the case. It was also recorded by the Labour Court that nowhere in the application filed under Order IX Rule 13 of the CPC it was even mentioned by the management - appellant as to how the management - appellant came to know about the passing of the ex parte award. The Labour Court also relied on the fact that no efforts were made either by the management or the authorized representative to know the status of the case from 26th February, 2001 till 21st September, 2002, when the ex parte award was passed, and also even before filing of the application dated 17th March, 2003.

4. Being aggrieved by the said order passed by the Labour Court, a writ petition was filed, which was considered by the learned Single Judge, who after referring to the facts of the case and also taking note of the negligence of the appellant in pursuing the matter, dismissed the writ petition.

5. Being aggrieved by the said order, now this appeal is filed on which we have heard the learned Counsel appearing for the appellant and also the counsel appearing for the State Government.

6. Similar pleas are also raised before us contending, inter alia, that the respondent - workman had abandoned his services and, Therefore, the appellant could not have been saddled with the aforesaid liability. The counsel has further submitted that the learned Single Judge as also the Labour Court were not justified in holding that there was lack of bona fides on the part of the appellant.

7. We are, however, not persuaded to accept the aforesaid submissions. The

facts delineated hereinbefore clearly make out a case of negligence and the absence of due diligence on the part of the appellant. The absence of the appellant from the proceedings during the period from 26th February, 2001 till 21st September, 2002 stands established. There is no reasonable Explanation nor any sufficient cause is made out for the said absence of the appellant and its failure to pursue the proceedings. We, Therefore, hold that there is no merit in this appeal, which is dismissed.

8. At this stage, counsel appearing for the appellant states that the appellant may be given four months time to enable the appellant to pay the amount, with which the appellant / management is saddled. He may file an appropriate application before the Labour Court for the aforesaid relief, which, when filed, shall be considered by the Labour Court in accordance with law.