

(2013) 05 DEL CK 0111
In the Delhi High Court
Case No : Writ Petition (C) 7668 of 2012

Ranjit Kumar

APPELLANT

Vs

The Management of M/s. Datamation Consultants and
Another

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11(10), 17, 33C(1)

Citation : (2013) 6 AD 760 : (2013) 201 DLT 290 : (2013) 4 LLN 232 : (2014) 2 SLJ 363

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Mohd. Nayeemuddin, for the Appellant; Bandana Shukla for Ms. Ruchi Sindhvani, Advocate for R-2/NCT, for the Respondent

Judgement

Vipin Sanghi, J.—Despite service, none has appeared for the respondent no. 1 even after a pass over. No counter-affidavit has been filed by either of the respondents. I have heard learned counsel for the petitioner and respondent no. 2, and I now proceed to dispose of the petition. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek the setting aside/quashing of the orders dated 4th February, 2012; 27th March, 2012; and 14th June, 2012. The first order dated 4th February, 2012 has been passed by the Presiding Officer of the Labour Court in ID No. 311/02 on the application of the petitioner. The second order dated 27th March, 2012 has been passed by the District Judge and Additional Sessions Judge (I/C) East, Karkardooma Courts, Delhi, holding that the execution is for an unliquidated amount and, consequently, the petitioner's application for transfer of the execution petition preferred by him-to execute the Industrial Award dated 30th March, 2011, to the Court of ADJ has been dismissed.

2. The third order assailed is passed by the Deputy Labour Commissioner (East) Delhi observing that, for execution of the aforesaid award the petitioner has

preferred an execution petition before the Civil Court and, in view of Section 11(10) of the Industrial Disputes Act, 1947 (for short, "the Act"), introduced by the Industrial Disputes (Amendment) Act, 2010, the Labour Court has sent the award to the Civil Court for execution and, therefore, no action is warranted on the petitioners application u/s 33C(1) of the Act. The petitioner also seeks a declaration that Section 33C(1) and Section 11(10) of the Act are alternative remedies and the workman has the option to elect either of the remedy. The petitioner seeks a direction to respondent no. 2 i.e. the Deputy Labour Commissioner to entertain the petitioner's application u/s 33C(1) of the Act. The facts may now be noted.

3. The Labour Court passed an Award in favour of the petitioner in ID No. 180/10 New (Old-311/02) on 30th March, 2011. By the said Award, the Labour Court held the termination of the petitioner's service by the respondent-management to be illegal and directed his reinstatement in service with 50% back wages. It has further been held in the Award that if back wages are not paid within 30 days, simple interest @ 8% per annum from the date of the Award, till realization, would be payable to the workman by the management. In view of the amended Section 11(10) of the Act, the Labour Court sent a copy of the Award to the Senior Civil Judge, District East, Delhi.

4. Section 11(10) of the Act reads as follows:-

11(10). The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.

5. The petitioner preferred an execution petition in the Court of Senior Civil Judge (SCJ), District East, Karkardooma Courts, Delhi. On 1st November, 2011, the Senior Civil Judge observed that copy of the Award already stood sent to that Court in terms of the Award dated 30th March, 2011. It was also informed to the Court that the Award had become enforceable with effect from 27th July, 2011 on publication of Award u/s 17 of the Act. The SCJ assigned the execution petition to the Court of Sh. Saurabh Kulshrestha Civil Judge for its disposal as per law, and directed the petitioner to appear before the said court on 1st November, 2011 at 2.00 PM.

6. From the execution petition preferred by the petitioner, it is seen that the amount claimed under the Award in the execution proceedings was Rs. 3,80,550/- along with interest @ 8% per annum from the date of the Award till realization. Since the amount of recovery was in excess of Rs. 3 lakhs and, therefore, beyond the pecuniary jurisdiction of the Civil Judge, it appears, the petitioner moved an application before the Labour Court for modification of the Award to the extent that the same be sent to the District Judge. This application was rejected by the Labour Court by the impugned order dated 4th February, 2012 by observing that as per provisions of Section 11(10) of the Act, the Award

has to be executed by the Civil Court, which includes the Court of District Judge, Additional District Judge, Senior Civil Judge and Civil Judge. The petitioner, it appears, then moved the District Judge, and on 27th March, 2012 the learned District Judge passed the order rejecting the petitioner's application for transfer of the execution petition before the ADJ by observing that the Award had not been made in respect of a liquidated amount and, therefore, it could not be ascertained as to whether the jurisdiction vested in the Civil Judge or the Additional District Judge. It appears that the petitioner decided not to waste any further time and to get embroiled in the said dispute-as to which Court is the competent court to execute the Award and, therefore, moved an application u/s 33C(1) of the Act before the Labour Commissioner. However, the said application has been rejected by the Deputy Labour Commissioner by the impugned order dated 14th June, 2012, by observing that in view of the introduction of Section 11(10) in the Act, and since the Award had already been sent to the learned Senior Civil Judge, District East, Delhi for execution, no action was warranted on the application u/s 33C(1) of the ID Act.

7. The submission of learned counsel for the petitioner is that on a conjoint reading of Section 11(10) and Section 33C(1) of the Act, the Award holder has the option to either elect to file an execution petition before the Civil Court, or prefer an application u/s 33C(1) before the Deputy Labour Commissioner to execute the Award. He submits that the petitioner has been made to run from pillar to post, and still the Award is not being executed. He submits that the executing Court of Sh. Saurabh Kulshrestha has been adjourning the execution petition 46/2011 "for consideration" from one date to another and now the said execution petition is listed on 24th May, 2013.

8. A perusal of the record and the aforesaid narration shows that the petitioner has unnecessarily been made to suffer harassment at the hands of the Courts as well as the Deputy Labour Commissioner.

9. Since the Award has been sent to the Civil Court in the light of the provisions of Section 11(10) of the Act, and the petitioner had filed an execution petition quantifying the amount payable under the Award as Rs. 3,80,550/-, the correct course of action for the SCJ to adopt on 01.11.2011 would have been to place the execution petition before the competent Court having pecuniary jurisdiction to deal with the execution. The SCJ, before whom the petitioner's execution petition came to be listed on 1st November, 2011, should himself have taken note of the fact that the amount due under the Award is in excess of Rs. 3 lakhs, and, therefore, should have assigned the execution petition to the Court of competent pecuniary jurisdiction, and not sent the same to the Court of Civil Judge. The mismanagement does not stop here. I am not able to appreciate as to what serious "consideration" the learned Civil Judge is required to undertake before proceeding in the execution petition. A bare perusal of the execution petition shows that the amount claimed is in excess of Rs. 3 lakhs. The learned Civil Judge, therefore, should have passed an order stating that he did not have

the pecuniary jurisdiction in the matter, and he should have placed the execution petition before the SCJ for being assigned to a court of competent pecuniary jurisdiction. However, the Civil Judge has been adjourning the execution petition for ten months, as is evident from the order dated 20.07.2012, and the submission of the petitioner's counsel that the petition is now listed "for consideration" on 24th May, 2013. The mismanagement of the petitioners case does not stop even here. When he moves the District Judge, even the District Judge does not come to the petitioners rescue. The District Judge rejects the petitioners application for transfer of the execution petition to the Court of the ADJ. The District Judge should have, at least, perused the petitioners execution petition, a perusal of which would have shown that the amount claimed in execution was in excess of Rs. 3 lakhs i.e. beyond the pecuniary jurisdiction of the Civil Judge. The District Judge should have transferred the execution petition to the Court of the Additional District Judge.

10. Section 11(10) has been extracted above. Section 33C(1) of the Act reads as follows:-

33C. Recovery of money due from an employer.-(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(Emphasis supplied)

11. A bare perusal of the aforesaid provision shows that the remedy u/s 33C(1) is without prejudice to any other mode of recovery available to the Award holder. The appropriate Government, therefore, could not have rejected the petitioner's application u/s 33C(1) unactioned, merely because the petitioner's execution petition was pending. The petitioner could have been asked to make his choice i.e. whether he was interested in pursuing his execution petition, or in pursuing the application u/s 33C(1) of the Act. Obviously, he cannot pursue both the remedies simultaneously and must make his election. However, I may note that the scope of the execution proceedings u/s 11(10) of the Act is much wider, as it

relates to execution of an Award wherein varied kinds of reliefs may have been granted such as reinstatement, promotion, etc. However, section 33C(1) can be invoked where the Award grants any monetary relief to the applicant. Therefore, in such like cases, the jurisdiction u/s 11(10) of the Civil Court and u/s 33C(1) of the Act of the appropriate government/Labour Commissioner is concurrent.

12. In view of the aforesaid discussion, the aforesaid orders dated 27.03.2012 of the District Judge, and dated 14.06.2012 of the Deputy Labour Commissioner appear to be result of non-application of mind, and cannot be sustained. They are accordingly quashed.

13. Since the petitioner has the option to elect one of the two remedies to execute the Award i.e. to proceed u/s 11(10) of the Act, or u/s 33C(1) of the Act, learned counsel for the petitioner submits that the petitioner would withdraw the execution petition before the Civil Court, as he wishes to pursue the execution proceedings before the appropriate Government i.e. Deputy Labour Commissioner u/s 33C(1) of the ID Act. Accordingly, the proceedings before the Civil Court in Execution Petition NO. 46/2011 stand dismissed as withdrawn, and the Deputy Labour Commissioner concerned is directed to proceed u/s 33C(1) of the ID Act to execute the Award in favour of the petitioner. The petition stands disposed of in the above terms leaving the parties to bear their respective costs. A copy of this order be communicated to the learned District Judge & ASJ (1/C) East, Karkardooma Courts, Delhi, to the Court of the Civil Judge, Karkardooma Courts, dealing with Ex. No. 46/2011, and to the Deputy Labour Commissioner (East) for information and compliance.